

Condensed Transcript  
Testimony of:

ANTHONY COLASURDO

Date: February 19, 2013

Alavez-Lopez, et al. v. South Jersey Sanitation Company, Inc.,  
et al

No.: USDC NJ 1:10-cv-05647

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| <p style="text-align: right;">1</p> <p>1 -----</p> <p>2 IN THE UNITED STATES DISTRICT COURT</p> <p>3 FOR THE DISTRICT OF NEW JERSEY</p> <p>4 -----</p> <p>5 JAVIER ALAVEZ-LOPEZ, ANTONIO : CIVIL ACTION</p> <p>6 HERNANDEZ, WILLIAM TOVILLA, :</p> <p>7 ALEJANDRO CONSTANTINO, :<br/>ANTONIO GUTIERREZ, MARCO :<br/>ANTONIO ORTEGA, on behalf of :<br/>themselves and those :<br/>similarly situated :</p> <p>8 Plaintiffs, :</p> <p>9 vs. :</p> <p>10 SOUTH JERSEY SANITATION :<br/>COMPANY, INC. and ANTHONY :<br/>COLARSURDO :</p> <p>11 Defendants. : NO. 1:10-CV-05647</p> <p>12 -----</p> <p>13 TUESDAY, FEBRUARY 19, 2013</p> <p>14 -----</p> <p>15 DEPOSITION of ANTHONY COLASURDO, held in the</p> <p>16 Law Offices of SWARTZ SWIDLER, LLC, 1878 Marlton</p> <p>17 Pike, Suite 10, Cherry Hill, New Jersey 08003,</p> <p>18 at approximately 1:30 p.m., on the above date,</p> <p>19 before Kimberly A. Little, a Registered</p> <p>20 Professional Reporter, New Jersey Certified</p> <p>21 Court Reporter and Notary Public in and for the</p> <p>22 Commonwealth of Pennsylvania.</p> <p>23 -----</p> <p>24 R&amp;K REPORTING INC.</p> <p>25 Court Reporting Services<br/>PO Box 1972<br/>Levittown, Pennsylvania 19058<br/>Phone 215-946-7009 Fax 215-949-1867</p> | <p style="text-align: right;">3</p> <p>1 I N D E X</p> <p>2 WITNESS: ANTHONY COLASURDO</p> <p>3 EXAMINATION PAGE</p> <p>4 By Mr. Swidler 4</p> <p>5</p> <p>6</p> <p>7</p> <p>8 E X H I B I T S</p> <p>9 MARKED DESCRIPTION PAGE</p> <p>10 (None marked)</p> <p>11</p> <p>12</p> <p>13</p> <p>14 DOCUMENT REQUESTS</p> <p>15 PAGE/LINE</p> <p>16 19/19</p> <p>17 49/07</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>   |
| <p style="text-align: right;">2</p> <p>1 APPEARANCES:</p> <p>2 SWARTZ SWIDLER, LLC</p> <p>3 BY: JUSTIN L. SWIDLER, ESQUIRE</p> <p>4 1878 Marlton Pike</p> <p>5 Suite 10</p> <p>6 Cherry Hill, New Jersey 08003</p> <p>7 856-283-3525</p> <p>8 -- Representing the Plaintiffs</p> <p>9</p> <p>10 COOPER, LEVENSON, APRIL</p> <p>11 NIEDELMAN &amp; WAGENHEIM, P.C.</p> <p>12 BY: ALYSON M. TOMLJENOVIC, ESQUIRE</p> <p>13 1125 Atlantic Avenue</p> <p>14 Atlantic City, New Jersey 08401</p> <p>15 609-572-7438</p> <p>16 atomljenovic@cooperlevenson.com</p> <p>17 -- Representing the Defendants</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>  | <p style="text-align: right;">4</p> <p>1 - - -</p> <p>2 PROCEEDINGS</p> <p>3 - - -</p> <p>4 (It is agreed by and between</p> <p>5 counsel for the respective parties</p> <p>6 that the signing, sealing, filing, and</p> <p>7 certification are hereby waived, and</p> <p>8 that all objections, except as to the</p> <p>9 form of the question, be reserved</p> <p>10 until the time of trial.)</p> <p>11 - - -</p> <p>12 ANTHONY COLASURDO, having been</p> <p>13 duly sworn, was examined and testified</p> <p>14 under oath as follows:</p> <p>15 - - -</p> <p>16 BY MR. SWIDLER:</p> <p>17 Q. Can you please state your name for</p> <p>18 the record?</p> <p>19 A. Pardon me?</p> <p>20 Q. Can you please state your name for</p> <p>21 the record?</p> <p>22 A. Anthony Colasurdo.</p> <p>23 Q. Mr. Colasurdo, do you go by Tony or</p> <p>24 Anthony?</p> <p>25 A. Anthony.</p> |

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| <p style="text-align: right;">5</p> <p>1 Q. My name is Justin Swidler. I</p> <p>2 introduced myself to you briefly while we were</p> <p>3 off the record. You can call me Justin. I am</p> <p>4 going to call you Anthony, as long as that is</p> <p>5 okay with you?</p> <p>6 A. That is perfectly fine.</p> <p>7 Q. I am going to go through a few ground</p> <p>8 rules for you today. It's probably the same</p> <p>9 rules you were told before in your deposition</p> <p>10 as a designee in this case and it's likely your</p> <p>11 attorney went over those rules with you today</p> <p>12 or earlier. But I'm just going to go over them</p> <p>13 now, so we're clear.</p> <p>14 The first rule today is, it's</p> <p>15 very important that you do not guess at any of</p> <p>16 my questions. That can mean two things. It</p> <p>17 can either mean that you didn't hear or</p> <p>18 understand the question and you're guessing at</p> <p>19 what my question was, or it could mean you have</p> <p>20 no idea of the answer and you're just taking a</p> <p>21 wild stab in the dark. I don't want you to do</p> <p>22 either of those. So if you don't know an</p> <p>23 answer, tell me you don't know and if you do</p> <p>24 not understand a question that I have asked,</p> <p>25 ask me to repeat or rephrase it. Do you</p> | <p style="text-align: right;">7</p> <p>1 earlier as a designee witness; however, if you</p> <p>2 need to take a break for any reason, the only</p> <p>3 rule is there cannot be a question pending in</p> <p>4 front of you when we go on break. Do you</p> <p>5 understand that?</p> <p>6 A. Yes.</p> <p>7 Q. Mr. Colasurdo, what businesses do you</p> <p>8 currently own?</p> <p>9 A. South Jersey Sanitation Company.</p> <p>10 Q. Okay. And how many hours per week do</p> <p>11 you work?</p> <p>12 A. I have a question.</p> <p>13 Q. Yes.</p> <p>14 MS. TOMLJENOVIC: Wait.</p> <p>15 THE WITNESS: I just broke the</p> <p>16 rule. If I own another business, do</p> <p>17 you want to know that as well?</p> <p>18 BY MR. SWIDLER:</p> <p>19 Q. I would like to know that. I am not</p> <p>20 going to go too much into it, but I would like</p> <p>21 to know, yes.</p> <p>22 A. I own another, a real estate company</p> <p>23 with my sister.</p> <p>24 Q. Okay. Do you have any employment</p> <p>25 other than at those two companies?</p>  |
| <p style="text-align: right;">6</p> <p>1 understand that?</p> <p>2 A. Yes, I do.</p> <p>3 Q. If you do answer a question today, we</p> <p>4 are going to assume now and a jury will assume</p> <p>5 later that you understood it. Is that fair?</p> <p>6 A. Yes.</p> <p>7 Q. The second rule today, it's important</p> <p>8 that we don't speak over each other. You will</p> <p>9 notice there is a court reporter sitting to</p> <p>10 your right and her job is to take down</p> <p>11 everything both of us say. For that reason,</p> <p>12 please just let me finish every question before</p> <p>13 you start answering and, likewise, I will let</p> <p>14 you finish every answer before I begin my next</p> <p>15 question.</p> <p>16 Do you understand that?</p> <p>17 A. I do.</p> <p>18 Q. If I do cut you off today, it's by</p> <p>19 mistake. It means I thought that you were done</p> <p>20 testifying. Just let me know that so that you</p> <p>21 can finish your answer. Do you understand</p> <p>22 that?</p> <p>23 A. I do.</p> <p>24 Q. All right. Finally, I don't expect</p> <p>25 to have you here too long. You did testify</p>   | <p style="text-align: right;">8</p> <p>1 A. No.</p> <p>2 Q. And how much of your time do you</p> <p>3 spend in the real estate venture, per week?</p> <p>4 A. About 10 hours.</p> <p>5 Q. How much time do you spend working</p> <p>6 for South Jersey Sanitation Company each week?</p> <p>7 A. 60 to 75 hours.</p> <p>8 Q. What time does your day typically</p> <p>9 start at South Jersey?</p> <p>10 A. There is no typical. Each day is</p> <p>11 different, of my day in particular.</p> <p>12 Q. Okay. I understand each day is</p> <p>13 different, but, for instance, I understand that</p> <p>14 you open up at 4:30 in the morning and close at</p> <p>15 the 11:00 at night. Is that accurate?</p> <p>16 A. The facility is opened.</p> <p>17 Q. That is Hammonton?</p> <p>18 A. Yes. I do not personally every day</p> <p>19 turn the key and put the lights on, nor do I</p> <p>20 lock up and shut the lights out every night.</p> <p>21 Q. You typically start your day at 9:00,</p> <p>22 correct?</p> <p>23 A. Me at the office, yes.</p> <p>24 Q. But normally your day runs from 9:00</p> <p>25 in the morning until about 9:00, 10:00 at</p> |

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| <p style="text-align: right;">9</p> <p>1 night, correct?</p> <p>2 A. Yes.</p> <p>3 Q. And that's not necessarily all at the</p> <p>4 physical location in Hammonton?</p> <p>5 A. That is correct.</p> <p>6 Q. Okay. And how much of that time is</p> <p>7 at the physical location in Hammonton?</p> <p>8 A. I can't answer that question.</p> <p>9 Q. All right.</p> <p>10 A. It would be a guess and you told me</p> <p>11 not to.</p> <p>12 Q. You can give me a range. I mean, you</p> <p>13 know the answer, so it's not a guess. The</p> <p>14 problem is that it's not consistent, correct?</p> <p>15 A. Yes.</p> <p>16 Q. So give me the range of when you</p> <p>17 typically get to Hammonton.</p> <p>18 A. I can't do that. I can't honestly</p> <p>19 answer that question.</p> <p>20 Q. So typically might be 9:00 and some</p> <p>21 days it might be later; is that fair?</p> <p>22 A. I'm not going to say that typically</p> <p>23 it is 9:00. It can be 9:00.</p> <p>24 Q. It can be 9:00 and it can be later</p> <p>25 than 9:00?</p>        | <p style="text-align: right;">11</p> <p>1 about your own personal experiences, I suppose</p> <p>2 you could tell me you don't remember, if you</p> <p>3 don't. But a guess does not mean that just</p> <p>4 because you don't have a consistent typical day</p> <p>5 means you can't answer these questions.</p> <p>6 When I used the word guess</p> <p>7 earlier, what I meant is something that you do</p> <p>8 not know, it is not in your mind and you can't</p> <p>9 give me any information on it because you don't</p> <p>10 have that piece of information. Do you</p> <p>11 understand what I mean now when I say guess?</p> <p>12 A. I would like to go off the record.</p> <p>13 Q. No. There is a question pending</p> <p>14 before you.</p> <p>15 A. I don't understand.</p> <p>16 Q. Okay.</p> <p>17 A. Is there a question still pending?</p> <p>18 Q. Yes, there is.</p> <p>19 A. Let me know, my attorney, when I've</p> <p>20 answered the question.</p> <p>21 Q. Okay. And if you want to say</p> <p>22 something, say it on the record.</p> <p>23 A. I don't.</p> <p>24 Q. Okay. My question to you -- first of</p> <p>25 all do you know what you do every day?</p> |
| <p style="text-align: right;">10</p> <p>1 A. It can.</p> <p>2 Q. Can it be later than noon?</p> <p>3 A. Some days.</p> <p>4 Q. Okay. It's fair to say you are not</p> <p>5 generally at the Hammonton location when the</p> <p>6 trucks go out in the morning, correct?</p> <p>7 A. Not every day.</p> <p>8 Q. Not typically?</p> <p>9 A. Not typically every day.</p> <p>10 Q. Okay. Not regularly, correct?</p> <p>11 A. When I choose to be.</p> <p>12 Q. How often is that?</p> <p>13 A. I can't answer that question.</p> <p>14 Q. Well, is it once a month?</p> <p>15 A. Sometimes.</p> <p>16 Q. Sometimes it's not once a month?</p> <p>17 A. Sometimes it's more.</p> <p>18 Q. Sometimes it's how many times per</p> <p>19 month?</p> <p>20 A. I would be guessing. I --</p> <p>21 Q. I think I want to redefine the word</p> <p>22 guess. A guess might be if I ask you, for</p> <p>23 instance, what type of car do I drive. You</p> <p>24 don't know the answer to that, I assume, so you</p> <p>25 would have to guess. However, if I am asking</p> | <p style="text-align: right;">12</p> <p>1 MS. TOMLJENOVIC: Objection to</p> <p>2 form.</p> <p>3 BY MR. SWIDLER:</p> <p>4 Q. Are you able to testify about what</p> <p>5 you do every day?</p> <p>6 MS. TOMLJENOVIC: Objection to</p> <p>7 form. He's already testified.</p> <p>8 MR. SWIDLER: He needs to answer</p> <p>9 the question. I am not going to let</p> <p>10 you make speaking objections today.</p> <p>11 THE WITNESS: What was the</p> <p>12 question?</p> <p>13 BY MR. SWIDLER:</p> <p>14 Q. Are you able to testify about what</p> <p>15 you do every day?</p> <p>16 MS. TOMLJENOVIC: Objection to</p> <p>17 form. You can answer.</p> <p>18 THE WITNESS: I can't give you a</p> <p>19 definitive answer as to what I do</p> <p>20 every day.</p> <p>21 BY MR. SWIDLER:</p> <p>22 Q. I don't want a definitive answer.</p> <p>23 A. I run -- I was speaking. I run a</p> <p>24 company. That requires me to do many things,</p> <p>25 such as being in Cherry Hill today for</p>  |

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| <p style="text-align: right;">13</p> <p>1 depositions. I am not at the office, but I am</p> <p>2 working.</p> <p>3 <b>Q. Okay. So I understand that not every</b></p> <p>4 <b>day is typical and things change. I am asking</b></p> <p>5 <b>you for the range. You've said that sometimes,</b></p> <p>6 <b>once per month, you might be in Hammonton when</b></p> <p>7 <b>the trucks leave, sometimes it might be twice a</b></p> <p>8 <b>month. I am asking for the range. Is it</b></p> <p>9 <b>between once a month and five times, between</b></p> <p>10 <b>once a month and every day? Whatever the range</b></p> <p>11 <b>is, that's what I am asking you for. I am not</b></p> <p>12 <b>imposing any limitation on your answer and I</b></p> <p>13 <b>don't expect you to tell me it's the same every</b></p> <p>14 <b>month.</b></p> <p>15 <b>On average, how many times per</b></p> <p>16 <b>month are you in Hammonton when the trucks</b></p> <p>17 <b>leave the station in the morning?</b></p> <p>18 MS. TOMLJENOVIC: Objection.</p> <p>19 You can answer.</p> <p>20 THE WITNESS: It never is the</p> <p>21 same. It's not something I keep</p> <p>22 track of.</p> <p>23 BY MR. SWIDLER:</p> <p>24 <b>Q. So you don't remember?</b></p> <p>25 A. No, I can't answer your question.</p> | <p style="text-align: right;">15</p> <p>1 <b>Q. Okay. How about in the month of</b></p> <p>2 <b>January?</b></p> <p>3 A. Four times.</p> <p>4 <b>Q. Okay. Do you think that's consistent</b></p> <p>5 <b>with your general monthly activities?</b></p> <p>6 A. I can't answer that.</p> <p>7 <b>Q. Because you don't remember?</b></p> <p>8 MS. TOMLJENOVIC: Objection.</p> <p>9 THE WITNESS: No. Because there</p> <p>10 is no consistent that I -- I mean,</p> <p>11 things are just not the same. They</p> <p>12 are different.</p> <p>13 BY MR. SWIDLER:</p> <p>14 <b>Q. Is there anyone in your management</b></p> <p>15 <b>who is at the yard every morning, or most</b></p> <p>16 <b>mornings at least, when the trucks leave the</b></p> <p>17 <b>yard?</b></p> <p>18 A. Yes.</p> <p>19 <b>Q. Who?</b></p> <p>20 A. Edwin Morales.</p> <p>21 <b>Q. Anyone else?</b></p> <p>22 A. There are other drivers, people who</p> <p>23 work for me.</p> <p>24 <b>Q. Sure. Anyone else that you consider</b></p> <p>25 <b>management?</b></p>  |
| <p style="text-align: right;">14</p> <p>1 MS. TOMLJENOVIC: Objection.</p> <p>2 BY MR. SWIDLER:</p> <p>3 <b>Q. Do you remember --</b></p> <p>4 A. The question doesn't make sense to</p> <p>5 me.</p> <p>6 <b>Q. Do you remember approximately how</b></p> <p>7 <b>many times per month you are at the Hammonton</b></p> <p>8 <b>yard when the trucks leave the yard in the</b></p> <p>9 <b>morning?</b></p> <p>10 MS. TOMLJENOVIC: Objection.</p> <p>11 THE WITNESS: Which month are we</p> <p>12 talking about?</p> <p>13 BY MR. SWIDLER:</p> <p>14 <b>Q. Over the last six months, do you</b></p> <p>15 <b>remember the average amount of times you were</b></p> <p>16 <b>in the yard when the trucks left the yard?</b></p> <p>17 A. No.</p> <p>18 <b>Q. How about over the last month, do you</b></p> <p>19 <b>remember?</b></p> <p>20 A. About.</p> <p>21 <b>Q. Okay. In the last month, about how</b></p> <p>22 <b>many times were you at the yard?</b></p> <p>23 A. In the month of February?</p> <p>24 <b>Q. In the month of February.</b></p> <p>25 A. Say three times.</p>   | <p style="text-align: right;">16</p> <p>1 A. No.</p> <p>2 <b>Q. You would agree with me that Edwin</b></p> <p>3 <b>Morales would know certainly better than you</b></p> <p>4 <b>would who was at the yard every morning and</b></p> <p>5 <b>what time they arrive, correct?</b></p> <p>6 A. I would agree with you based upon the</p> <p>7 form of your question, yes.</p> <p>8 <b>Q. Would you agree with me that</b></p> <p>9 <b>Mr. Morales would also know of the times that</b></p> <p>10 <b>the trucks leave the yard better than you</b></p> <p>11 <b>would?</b></p> <p>12 MS. TOMLJENOVIC: Objection to</p> <p>13 form.</p> <p>14 THE WITNESS: I am going to say</p> <p>15 no.</p> <p>16 BY MR. SWIDLER:</p> <p>17 <b>Q. Okay. What personal knowledge do you</b></p> <p>18 <b>have regarding what times the trucks leave the</b></p> <p>19 <b>yard every morning?</b></p> <p>20 A. I can personally determine what time</p> <p>21 every truck left the yard, should I choose to,</p> <p>22 by technology.</p> <p>23 <b>Q. Through, like, video cameras?</b></p> <p>24 A. GPS.</p> <p>25 <b>Q. So you keep GPS records of the</b></p> |

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| <p style="text-align: right;">17</p> <p>1 trucks?</p> <p>2 A. For certain of period of time, we do.</p> <p>3 Q. What period of time do you have GPS</p> <p>4 records for the trucks?</p> <p>5 A. I don't understand the question.</p> <p>6 Q. South Jersey Sanitation has GPS</p> <p>7 records relating to the trucks, correct?</p> <p>8 A. They are not printed. I mean, we</p> <p>9 don't print them every day.</p> <p>10 Q. I understand.</p> <p>11 A. We have GPS on the vehicles.</p> <p>12 Q. And --</p> <p>13 A. If I choose to track a vehicle, we</p> <p>14 can raise it on the computer screen.</p> <p>15 Q. If you don't choose to track the</p> <p>16 vehicle, is the vehicle's movements recorded on</p> <p>17 the computer?</p> <p>18 A. It is.</p> <p>19 Q. So right now South Jersey has in its</p> <p>20 possession GPS records for some of the trucks;</p> <p>21 is that correct?</p> <p>22 A. Yes.</p> <p>23 MS. TOMLJENOVIC: Objection to</p> <p>24 form.</p> <p>25 BY MR. SWIDLER:</p>   | <p style="text-align: right;">19</p> <p>1 would relate to the time that the throwers</p> <p>2 worked?</p> <p>3 A. I am.</p> <p>4 Q. Are you aware that one of the records</p> <p>5 South Jersey Sanitation produced were time</p> <p>6 records for the truck drivers?</p> <p>7 A. Yes.</p> <p>8 Q. Do you understand that that was</p> <p>9 because those were allegedly the most accurate</p> <p>10 records South Jersey had regarding when the</p> <p>11 trucks left the station?</p> <p>12 A. What I didn't even think about were</p> <p>13 the GPS records. I just never occurred to me.</p> <p>14 Q. Until now?</p> <p>15 A. Until now, yeah.</p> <p>16 Q. How long would it take you to get</p> <p>17 those records to your attorney?</p> <p>18 A. I don't know.</p> <p>19 Q. All right. I am reserving the right</p> <p>20 to call you back and I'm reserving the right to</p> <p>21 call Mr. Morales back and I'm reserving the</p> <p>22 right to call a 30(b)6 deposition. I am going</p> <p>23 to have to contact the Court based on the</p> <p>24 deadline. We expect to have those records</p> <p>25 turned over immediately. You can speak to your</p> |
| <p style="text-align: right;">18</p> <p>1 Q. Does it have GPS records for all of</p> <p>2 the trucks?</p> <p>3 A. Most of them.</p> <p>4 Q. How long has South Jersey Sanitation</p> <p>5 been maintaining those records?</p> <p>6 A. About a year.</p> <p>7 Q. You started keeping those records</p> <p>8 about a year ago?</p> <p>9 A. And the GPS system also was a year</p> <p>10 old.</p> <p>11 Q. Why did you install the GPS system?</p> <p>12 A. So I could track my trucks. And to</p> <p>13 add, it may even be a couple of months longer</p> <p>14 than a year. That was a range. Again, I can't</p> <p>15 tell you the exact date.</p> <p>16 Q. So these GPS records would show the</p> <p>17 exact time the truck left the yard every</p> <p>18 morning, correct?</p> <p>19 A. If they are working properly.</p> <p>20 Q. And they would show the exact time</p> <p>21 the truck came back to the yard every day,</p> <p>22 correct?</p> <p>23 A. If they were working properly, yes.</p> <p>24 Q. Are you aware that in this lawsuit we</p> <p>25 have asked for any records that you have that</p> | <p style="text-align: right;">20</p> <p>1 attorney about this request.</p> <p>2 MR. SWIDLER: Do I need to put</p> <p>3 it in writing to you?</p> <p>4 MS. TOMLJENOVIC: Yes, you do.</p> <p>5 We will most likely object to it.</p> <p>6 MR. SWIDLER: Okay. Why don't</p> <p>7 after this dep we get the Judge on</p> <p>8 the phone so you can talk to her</p> <p>9 about your objection now, because we</p> <p>10 have --</p> <p>11 MS. TOMLJENOVIC: Well --</p> <p>12 MR. SWIDLER: I am going to call</p> <p>13 the Judge.</p> <p>14 MS. TOMLJENOVIC: Go ahead and</p> <p>15 call her.</p> <p>16 BY MR. SWIDLER:</p> <p>17 Q. You have these records going back</p> <p>18 about one year?</p> <p>19 A. I'm guessing, again --</p> <p>20 Q. About a year, you're estimating,</p> <p>21 correct?</p> <p>22 A. Again, I am guessing. It could be</p> <p>23 shorter. I have to check my records.</p> <p>24 Q. What computer are these records saved</p> <p>25 on?</p>  |

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| <p style="text-align: right;">21</p> <p>1 A. I don't know. I mean, it's a system</p> <p>2 that I have people run. I have very limited</p> <p>3 skills with running that, to answer your</p> <p>4 question, about the program or the system.</p> <p>5 <b>Q. Who runs the system?</b></p> <p>6 A. It runs itself.</p> <p>7 <b>Q. You said you have people who run it?</b></p> <p>8 A. When I have a question, I go to ask</p> <p>9 someone, Edwin Morales. One of my people in</p> <p>10 the office can pull up a truck on the certain</p> <p>11 date to see what it is I might be looking for.</p> <p>12 <b>Q. So Mr. Morales is the person who</b></p> <p>13 <b>knows how to use the system?</b></p> <p>14 A. He does have knowledge of the system.</p> <p>15 <b>Q. He's the person you go to when you</b></p> <p>16 <b>need information about the GPS records</b></p> <p>17 <b>coordinates of the truck?</b></p> <p>18 A. I said he was one of the people.</p> <p>19 <b>Q. Who are the other people?</b></p> <p>20 A. People in my office.</p> <p>21 <b>Q. Tell me who they are by name, please.</b></p> <p>22 A. You want names?</p> <p>23 <b>Q. I want names.</b></p> <p>24 A. Okay. You didn't ask before.</p> <p>25 <b>Q. When I say who, I think it infers</b></p> | <p style="text-align: right;">23</p> <p>1 <b>Q. Anybody else?</b></p> <p>2 A. Yes. Michele Bauer. That is all.</p> <p>3 <b>Q. Okay. So the people who use the GPS</b></p> <p>4 <b>system are Mr. Rodriguez, Ms. Badliacco,</b></p> <p>5 <b>Ms. DeRossi, and Ms. Bauer?</b></p> <p>6 A. Who is Mr. Rodriguez?</p> <p>7 <b>Q. I'm sorry. I didn't mean</b></p> <p>8 <b>Mr. Rodriguez. Mr. Lopez -- no, not Lopez.</b></p> <p>9 A. Who is Mr. Lopez?</p> <p>10 <b>Q. You know who I'm talking about.</b></p> <p>11 A. This is your deposition, my friend.</p> <p>12 <b>Q. Mr. Morales, excuse me. Those are</b></p> <p>13 <b>the only people, correct?</b></p> <p>14 A. Who are we talking about?</p> <p>15 <b>Q. Mr. Morales, Ms. Badliacco, Ms.</b></p> <p>16 <b>DeRossi, and Ms. Bauer are the four people who</b></p> <p>17 <b>know how to use the GPS system, correct?</b></p> <p>18 A. Yes, sir.</p> <p>19 <b>Q. So when you want information of the</b></p> <p>20 <b>coordinates of the truck, you ask one of those</b></p> <p>21 <b>four, correct?</b></p> <p>22 A. Yes.</p> <p>23 <b>Q. So do you know how to use the system</b></p> <p>24 <b>yourself?</b></p> <p>25 A. No.</p>   |
| <p style="text-align: right;">22</p> <p>1 <b>names, but that's okay. We will be a lot</b></p> <p>2 <b>longer today if this is the way we are going to</b></p> <p>3 <b>do this.</b></p> <p>4 MS. TOMLJENOVIC: Objection.</p> <p>5 THE WITNESS: I have nothing but</p> <p>6 time, but I do feel I am being</p> <p>7 badgered and I am raising my</p> <p>8 complaint right now and I would like</p> <p>9 to have my attorney speak to the</p> <p>10 judge about your behavior.</p> <p>11 MR. SWIDLER: We absolutely will</p> <p>12 be calling the judge during the</p> <p>13 deposition. It is a promise I will</p> <p>14 make to you if you want me to.</p> <p>15 Nevertheless, you need to answer the</p> <p>16 question.</p> <p>17 THE WITNESS: What was the</p> <p>18 question again?</p> <p>19 BY MR. SWIDLER:</p> <p>20 <b>Q. The question was, other than Mr.</b></p> <p>21 <b>Morales, please tell me who uses the GPS system</b></p> <p>22 <b>that tracks the trucks?</b></p> <p>23 A. Dina Badliacco.</p> <p>24 <b>Q. Anyone else?</b></p> <p>25 A. Yes. Lisa DeRossi.</p>  | <p style="text-align: right;">24</p> <p>1 <b>Q. So when I asked you earlier if it's</b></p> <p>2 <b>true, that Mr. Morales had the most accurate --</b></p> <p>3 <b>new better than you did what time the trucks</b></p> <p>4 <b>left every morning, that is accurate, isn't it?</b></p> <p>5 MS. TOMLJENOVIC: Objection to</p> <p>6 form. You can answer.</p> <p>7 THE WITNESS: Yeah. I thought I</p> <p>8 answered your question as fairly as I</p> <p>9 could. And you asked me, I believe,</p> <p>10 how would I know how what times</p> <p>11 trucks left if I wasn't there. I</p> <p>12 mentioned there is a GPS system and I</p> <p>13 could pull up to check a vehicle.</p> <p>14 BY MR. SWIDLER:</p> <p>15 <b>Q. And then somebody would tell you what</b></p> <p>16 <b>that information was?</b></p> <p>17 A. Or they would print it for me.</p> <p>18 <b>Q. Okay. And how often do you do that?</b></p> <p>19 A. Whenever I feel like it.</p> <p>20 <b>Q. How often was that, once a month?</b></p> <p>21 A. You're asking me an impossible</p> <p>22 questions.</p> <p>23 <b>Q. You installed it a year ago. How</b></p> <p>24 <b>many times have you done that since the system</b></p> <p>25 <b>has been installed, approximately?</b></p> |

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| <p style="text-align: right;">25</p> <p>1 A. I don't know.</p> <p>2 <b>Q. Has it been more than one time?</b></p> <p>3 A. It has.</p> <p>4 <b>Q. Has it been more than five times?</b></p> <p>5 A. Yes.</p> <p>6 <b>Q. Has it been more than 20 times?</b></p> <p>7 A. Yes.</p> <p>8 <b>Q. Has it been more than 50 times?</b></p> <p>9 A. I don't know.</p> <p>10 <b>Q. When is the most recent time you ran</b></p> <p>11 <b>the GPS data?</b></p> <p>12 A. Repeat that again.</p> <p>13 <b>Q. When is the most recent time you</b></p> <p>14 <b>reviewed the GPS data from one of your trucks?</b></p> <p>15 A. Last week. Today is Tuesday, the</p> <p>16 19th of February, I think Thursday, which would</p> <p>17 be the 14th of February, Valentine's Day.</p> <p>18 <b>Q. Why did you run it on that day?</b></p> <p>19 A. I wanted to see how long a particular</p> <p>20 route was taking, I was looking into one of my</p> <p>21 drivers.</p> <p>22 <b>Q. Which driver?</b></p> <p>23 A. Glenn Onkay.</p> <p>24 <b>Q. Which route does he run?</b></p> <p>25 A. Front load route.</p>   | <p style="text-align: right;">27</p> <p>1 year, do you mean --</p> <p>2 <b>Q. The going back --</b></p> <p>3 A. Calendar year or 12 months?</p> <p>4 <b>Q. I mean 12 months.</b></p> <p>5 A. Then the answer is yes --</p> <p>6 <b>Q. Okay.</b></p> <p>7 A. -- that I have reviewed GPS on a</p> <p>8 residential route within the last 12 months,</p> <p>9 more than five times.</p> <p>10 <b>Q. More than five times? Okay. But not</b></p> <p>11 <b>last year? When you said you hadn't done it in</b></p> <p>12 <b>the last year, so I am trying to understand</b></p> <p>13 <b>that answer now.</b></p> <p>14 A. You asked me if I had -- this is</p> <p>15 going to be quite tedious if I have to remember</p> <p>16 everything that you ask me. But I believe</p> <p>17 you've asked me if during the last year I have</p> <p>18 reviewed a residential truck more than five</p> <p>19 times. And my answer was no, because in my</p> <p>20 head, I'm thinking -- and that is why I</p> <p>21 clarified, do we mean from January 1 to today</p> <p>22 or the last 12 months.</p> <p>23 <b>Q. So last year --</b></p> <p>24 A. That is why I asked you that</p> <p>25 question.</p> |
| <p style="text-align: right;">26</p> <p>1 <b>Q. What location does he go to?</b></p> <p>2 A. All over, I mean, he wasn't -- he was</p> <p>3 picking up commercial customers.</p> <p>4 <b>Q. He wasn't doing residential trash</b></p> <p>5 <b>pickup?</b></p> <p>6 A. No.</p> <p>7 <b>Q. Did you ever run the GPS data for a</b></p> <p>8 <b>truck that does residential trash pickup?</b></p> <p>9 A. Say that again, please.</p> <p>10 <b>Q. Have you ever run the GPS data for a</b></p> <p>11 <b>truck that does residential trash pickup?</b></p> <p>12 A. Myself personally, no.</p> <p>13 <b>Q. Have you ever reviewed the GPS data</b></p> <p>14 <b>for a truck that runs residential trash pickup?</b></p> <p>15 A. Yes.</p> <p>16 <b>Q. When is the most recent time you did</b></p> <p>17 <b>that?</b></p> <p>18 A. Don't recall.</p> <p>19 <b>Q. How many times have you done that,</b></p> <p>20 <b>more than five times in the last year, reviewed</b></p> <p>21 <b>data specifically for a residential trash</b></p> <p>22 <b>pickup truck?</b></p> <p>23 A. No.</p> <p>24 <b>Q. Okay.</b></p> <p>25 A. Wait a minute. When you say, last</p> | <p style="text-align: right;">28</p> <p>1 <b>Q. Just so I know how to phrase my</b></p> <p>2 <b>questions better, last year to you means 2013?</b></p> <p>3 A. Last year to me --</p> <p>4 MS. TOMLJENOVIC: Objection to</p> <p>5 form.</p> <p>6 THE WITNESS: I think you need</p> <p>7 to specify the time frame you're</p> <p>8 asking me a particular question</p> <p>9 about.</p> <p>10 BY MR. SWIDLER:</p> <p>11 <b>Q. I want to make sure I ask my</b></p> <p>12 <b>questions the way you can understand them.</b></p> <p>13 <b>When I say, last year, do you think that means</b></p> <p>14 <b>2013?</b></p> <p>15 A. It can be whatever period you want me</p> <p>16 to think.</p> <p>17 <b>Q. Is that what you think it means?</b></p> <p>18 A. In that particular way you phrased it</p> <p>19 the first time when you asked me that question,</p> <p>20 you said in this past year, to me, that meant</p> <p>21 the year we are in, the way --</p> <p>22 <b>Q. I didn't say in this past year. You</b></p> <p>23 <b>had it right the first time.</b></p> <p>24 A. That is what I thought you said.</p> <p>25 Again, I am not going to remember what it is</p>                  |

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| <p style="text-align: right;">29</p> <p>1 you said.</p> <p>2 THE WITNESS: And, again, for</p> <p>3 the second time, I feel like I am</p> <p>4 being badgered by this young man.</p> <p>5 BY MR. SWIDLER:</p> <p>6 <b>Q. I am allowed to figure out why you're</b></p> <p>7 <b>changing your responses. That's part of my</b></p> <p>8 <b>job, in fact. I wouldn't be doing my job if I</b></p> <p>9 <b>didn't do that. I will be doing that</b></p> <p>10 <b>throughout this whole deposition.</b></p> <p>11 A. My personal opinion on that is, since</p> <p>12 you can't remember a person's name that you</p> <p>13 deposed not long ago, why am I being held to a</p> <p>14 higher standard than you when it comes to</p> <p>15 remembering what you said, when you can't</p> <p>16 remember it yourself.</p> <p>17 <b>Q. I wasn't asking what my question was.</b></p> <p>18 <b>I am asking what you meant by last year. When</b></p> <p>19 <b>you repeated my question, you had it right. So</b></p> <p>20 <b>I think you remembered it just fine.</b></p> <p>21 <b>Have you reviewed the GPS data</b></p> <p>22 <b>for a residential trash pickup truck more than</b></p> <p>23 <b>10 times in the last year, which would go back</b></p> <p>24 <b>12 months?</b></p> <p>25 A. Yes.</p> | <p style="text-align: right;">31</p> <p>1 BY MR. SWIDLER:</p> <p>2 <b>Q. You can give me a range, sir.</b></p> <p>3 MS. TOMLJENOVIC: That is his</p> <p>4 testimony.</p> <p>5 MR. SWIDLER: No speaking</p> <p>6 objection. You know that.</p> <p>7 MS. TOMLJENOVIC: Let's stop and</p> <p>8 call the judge. Enough is enough</p> <p>9 with this.</p> <p>10 BY MR. SWIDLER:</p> <p>11 <b>Q. I am allowed to ask you for an</b></p> <p>12 <b>estimate on range. You have told me it's more</b></p> <p>13 <b>than 10 times.</b></p> <p>14 MS. TOMLJENOVIC: I said we are</p> <p>15 going to call the judge.</p> <p>16 THE WITNESS: May I ask</p> <p>17 something of my attorney?</p> <p>18 MS. TOMLJENOVIC: No. You can't</p> <p>19 talk to me now that the deposition</p> <p>20 has started.</p> <p>21 THE WITNESS: I'm done until we</p> <p>22 speak to the judge. I am done.</p> <p>23 MS. TOMLJENOVIC: Let's speak to</p> <p>24 the judge.</p> <p>25 MR. SWIDLER: Okay. So I just</p>   |
| <p style="text-align: right;">30</p> <p>1 <b>Q. How many times have you reviewed it?</b></p> <p>2 A. I don't know.</p> <p>3 <b>Q. It's more than 10. Give me a number</b></p> <p>4 <b>that it's less than?</b></p> <p>5 MS. TOMLJENOVIC: Objection to</p> <p>6 form.</p> <p>7 THE WITNESS: I can't answer</p> <p>8 that question. Your questions are</p> <p>9 nonsensical.</p> <p>10 BY MR. SWIDLER:</p> <p>11 <b>Q. Do you not understand the question?</b></p> <p>12 MS. TOMLJENOVIC: Objection.</p> <p>13 THE WITNESS: I understand how</p> <p>14 you are asking them.</p> <p>15 BY MR. SWIDLER:</p> <p>16 <b>Q. Do you not understand my question?</b></p> <p>17 A. You are asking for a number I cannot</p> <p>18 give you truthfully.</p> <p>19 <b>Q. I am asking you what the outer limits</b></p> <p>20 <b>of the amount of times that you reviewed the</b></p> <p>21 <b>data are. Certainly you can give me a range.</b></p> <p>22 MS. TOMLJENOVIC: Objection. He</p> <p>23 testified he can't.</p> <p>24 MR. SWIDLER: It's not credible</p> <p>25 that he can't.</p>  | <p style="text-align: right;">32</p> <p>1 want to understand. I want to make</p> <p>2 sure I can explain to the judge what</p> <p>3 you're telling me. You're</p> <p>4 refusing --</p> <p>5 THE WITNESS: You can explain to</p> <p>6 the judge exactly what I am going to</p> <p>7 tell him.</p> <p>8 MS. TOMLJENOVIC: You are not</p> <p>9 going to speak to the judge.</p> <p>10 MR. SWIDLER: And it's a her.</p> <p>11 THE WITNESS: Okay. Regardless.</p> <p>12 You are badgering me. I am willing</p> <p>13 to be here and answer any question</p> <p>14 that you ask that makes sense to the</p> <p>15 best of my ability.</p> <p>16 BY MR. SWIDLER:</p> <p>17 <b>Q. I'm allowed to ask you for estimates.</b></p> <p>18 <b>You are the only person who would know how many</b></p> <p>19 <b>times you viewed this data.</b></p> <p>20 A. I am not going to sit here and argue</p> <p>21 with you.</p> <p>22 <b>Q. I am not arguing with you.</b></p> <p>23 MS. TOMLJENOVIC: Let's just</p> <p>24 call the judge.</p> <p>25 THE WITNESS: I think you are --</p> |

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| <p style="text-align: right;">33</p> <p>1 MR. SWIDLER: What is the</p> <p>2 objection?</p> <p>3 MS. TOMLJENOVIC: Because you</p> <p>4 asked the same question 20 times. He</p> <p>5 says he doesn't recall.</p> <p>6 MR. SWIDLER: He never said he</p> <p>7 doesn't recall. He said he won't</p> <p>8 answer.</p> <p>9 MS. TOMLJENOVIC: He did say</p> <p>10 that several times until you badgered</p> <p>11 him into one --</p> <p>12 MR. SWIDLER: No. If he says he</p> <p>13 doesn't recall, we'll move on. If he</p> <p>14 says he doesn't recall, I'm moving</p> <p>15 on.</p> <p>16 MS. TOMLJENOVIC: You can go</p> <p>17 back and read the whole thing. When</p> <p>18 he tried to say he didn't recall, you</p> <p>19 said that is not credible.</p> <p>20 MR. SWIDLER: No. What he said</p> <p>21 is he can't answer the question,</p> <p>22 which is not the same as I can't</p> <p>23 recall.</p> <p>24 BY MR. SWIDLER:</p> <p>25 <b>Q. Is your testimony you don't know, you</b></p>   | <p style="text-align: right;">35</p> <p>1 <b>do with a union campaign?</b></p> <p>2 A. No.</p> <p>3 <b>Q. Okay. Why do you not keep specific</b></p> <p>4 <b>records regarding the hours that the throwers</b></p> <p>5 <b>work?</b></p> <p>6 A. We just never did. And when it</p> <p>7 became problematic, I was always of the opinion</p> <p>8 that we were compensating them very fairly</p> <p>9 based upon minimum wage and what their hours</p> <p>10 would have been throughout a year, that</p> <p>11 sometimes there are longer workdays or shorter</p> <p>12 workdays than others. And so I gave them what</p> <p>13 I thought was a very livable wage, commensurate</p> <p>14 with the industry, so that these men in</p> <p>15 February can make the same pay or come home</p> <p>16 with a decent pay as they would in July.</p> <p>17 February, because there is no hours, they're</p> <p>18 shorter days. And I use that as a range, if</p> <p>19 you will. Certain times of year are busier</p> <p>20 than others. But a man still needs to make</p> <p>21 enough money to feed his family.</p> <p>22 <b>Q. My question to you wasn't why do you</b></p> <p>23 <b>pay the truck throwers as you do. My question</b></p> <p>24 <b>is, why have you chosen not to keep records</b></p> <p>25 <b>regarding the hours they work?</b></p> |
| <p style="text-align: right;">34</p> <p>1 <b>have no idea, it could be 20 times, it could be</b></p> <p>2 <b>500 times, how many times you reviewed the GPS</b></p> <p>3 <b>data for residential trash pickup trucks?</b></p> <p>4 A. My answer is, that I cannot give you</p> <p>5 a specific number of times, even into a range</p> <p>6 that is between 20 and 500.</p> <p>7 <b>Q. Okay. You've answered the question.</b></p> <p>8 <b>We can move on.</b></p> <p>9 <b>I am just going to show you three</b></p> <p>10 <b>documents we marked --</b></p> <p>11 THE WITNESS: Are we no longer</p> <p>12 calling the judge?</p> <p>13 MS. TOMLJENOVIC: No. We will</p> <p>14 call him later. We were going to</p> <p>15 call him with regards to that line of</p> <p>16 questioning.</p> <p>17 BY MR. SWIDLER:</p> <p>18 <b>Q. These were previously marked 1A, 1B,</b></p> <p>19 <b>and 1C. According to your earlier testimony</b></p> <p>20 <b>and according to Mr. Morales' testimony, South</b></p> <p>21 <b>Jersey Sanitation does not keep specific time</b></p> <p>22 <b>records for throwers; is that accurate?</b></p> <p>23 A. Yes, it is.</p> <p>24 <b>Q. Okay. And you testified in your</b></p> <p>25 <b>previous deposition that that had something to</b></p> | <p style="text-align: right;">36</p> <p>1 A. A lot of the throwers don't come to</p> <p>2 the physical facility to punch in or out. We</p> <p>3 pick them up at home. We allow them to use</p> <p>4 their own transportation if they wish to come</p> <p>5 to where they are going to work. So they are</p> <p>6 not necessarily there to punch a clock, a time</p> <p>7 card.</p> <p>8 <b>Q. It's --</b></p> <p>9 A. In further answer your question, you</p> <p>10 mentioned the union, once this lawsuit was</p> <p>11 brought, by your firm, because of the union</p> <p>12 activity that was coming on, we were not</p> <p>13 allowed by union rules or the National Labor</p> <p>14 Relations Board to change things we were doing.</p> <p>15</p> <p>16 <b>Q. But the throwers are not part of the</b></p> <p>17 <b>union, are they?</b></p> <p>18 A. There is no union, but they were part</p> <p>19 of the -- I forgot what they call it, but part</p> <p>20 of the unit.</p> <p>21 <b>Q. The bargaining group?</b></p> <p>22 A. The bargaining -- something similar</p> <p>23 to that.</p> <p>24 <b>Q. The throwers, they help, obviously,</b></p> <p>25 <b>with residential track pickup, correct?</b></p>  |

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| <p style="text-align: right;">37</p> <p>1 A. Yes.</p> <p>2 <b>Q. Is it your position that their day</b></p> <p>3 <b>starts when they arrive at the first residence</b></p> <p>4 <b>where they will be picking up trash?</b></p> <p>5 A. Yes. The thrower's day starts when</p> <p>6 they begin physically to work.</p> <p>7 <b>Q. But what do you mean by that?</b></p> <p>8 A. That they start putting trash into</p> <p>9 the vehicle, into the truck.</p> <p>10 <b>Q. How about when they get out of the</b></p> <p>11 <b>inside of the truck and go on the back of the</b></p> <p>12 <b>truck, but before they have started picking up</b></p> <p>13 <b>trash, is that work? So they are now standing</b></p> <p>14 <b>on the outside of the truck, but they haven't</b></p> <p>15 <b>yet arrived at the first residence, would you</b></p> <p>16 <b>consider that work?</b></p> <p>17 MS. TOMLJENOVIC: Objection to</p> <p>18 form.</p> <p>19 THE WITNESS: I think that's a</p> <p>20 very short period of time, because</p> <p>21 the traveling distance they need to</p> <p>22 be in the vehicle. Let's say that</p> <p>23 when the vehicle they are traveling</p> <p>24 in pulls up to the first trash can,</p> <p>25 that is part of their day, that's</p>  | <p style="text-align: right;">39</p> <p>1 A. Many of the throwers know the routes</p> <p>2 better than the drivers.</p> <p>3 <b>Q. Are the throwers informed before each</b></p> <p>4 <b>day of work -- it doesn't matter what time --</b></p> <p>5 <b>prior to the day of work, which house will be</b></p> <p>6 <b>the first residence they will pick up trash</b></p> <p>7 <b>from that day?</b></p> <p>8 MS. TOMLJENOVIC: Objection to</p> <p>9 form. You can answer, if you can.</p> <p>10 THE WITNESS: I don't know what</p> <p>11 they know.</p> <p>12 BY MR. SWIDLER:</p> <p>13 <b>Q. They are riding in the garbage truck</b></p> <p>14 <b>that they'll be working on, correct?</b></p> <p>15 A. In some cases. In most cases.</p> <p>16 <b>Q. Okay. In other words, they are not</b></p> <p>17 <b>taking a bus? They are riding in the garbage</b></p> <p>18 <b>truck, correct?</b></p> <p>19 A. They have taken their own</p> <p>20 transportation to work and we pick them up</p> <p>21 at -- for instance, and this is the only way I</p> <p>22 can answer this question, if they are working</p> <p>23 in Cherry Hill but they live in Vineland, they</p> <p>24 have the option to take whatever route,</p> <p>25 whatever transportation they want, to get to a</p> |
| <p style="text-align: right;">38</p> <p>1 when the workday starts. I would</p> <p>2 include the time it takes for them to</p> <p>3 walk to the back of the truck.</p> <p>4 BY MR. SWIDLER:</p> <p>5 <b>Q. Maybe this is your answer -- and I'm</b></p> <p>6 <b>not trying to put words in your mouth. I want</b></p> <p>7 <b>to understand. Do they exit out of the</b></p> <p>8 <b>passenger part of the truck upon arriving at</b></p> <p>9 <b>the very first residence they will taking the</b></p> <p>10 <b>trash out of, or do they exit out of the</b></p> <p>11 <b>passenger area of the truck before then, if you</b></p> <p>12 <b>know? I don't want you to guess.</b></p> <p>13 A. Well, no. We have been through this</p> <p>14 before, when I tried not to guess and then you</p> <p>15 get mad at me. I think, to answer your</p> <p>16 question in the best manner that I can, that</p> <p>17 they have no reason to get out of the truck</p> <p>18 before they are ready to start picking up at</p> <p>19 work, to go to work.</p> <p>20 <b>Q. Okay.</b></p> <p>21 A. I've never had that particular</p> <p>22 question posed to me.</p> <p>23 <b>Q. Does a thrower know the specific</b></p> <p>24 <b>house, the very first house of the route each</b></p> <p>25 <b>day? Is that told to the thrower?</b></p> | <p style="text-align: right;">40</p> <p>1 spot in Cherry Hill where we'll pick them up.</p> <p>2 <b>Q. So there are specific locations that</b></p> <p>3 <b>they can report to?</b></p> <p>4 MS. TOMLJENOVIC: Objection to</p> <p>5 form.</p> <p>6 BY MR. SWIDLER:</p> <p>7 <b>Q. That isn't the residence, but it's</b></p> <p>8 <b>somewhere close to the residences; is that your</b></p> <p>9 <b>testimony?</b></p> <p>10 A. They could, if they'd like.</p> <p>11 <b>Q. Okay. I just want to understand. If</b></p> <p>12 <b>they don't do that, they are getting on the</b></p> <p>13 <b>garbage truck and the garbage truck is driving</b></p> <p>14 <b>them to the residence, correct?</b></p> <p>15 A. Yes.</p> <p>16 <b>Q. Okay. And just so that I can</b></p> <p>17 <b>understand, do you have any accurate records</b></p> <p>18 <b>regarding the exact time that the thrower</b></p> <p>19 <b>starts the workday, as you define that term, in</b></p> <p>20 <b>other words, when they first start picking up</b></p> <p>21 <b>trash? Do you have any records that show that</b></p> <p>22 <b>time?</b></p> <p>23 A. Perhaps.</p> <p>24 <b>Q. What records do you have?</b></p> <p>25 A. If those GPS reports are accurate, I</p>                                     |

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| <p style="text-align: right;">41</p> <p>1 can see when the truck starts a residential</p> <p>2 route. We would be inferring that's actually</p> <p>3 what they are doing, but there is no video, but</p> <p>4 we can look at a GPS report to see when it</p> <p>5 arrives at, you know, 1978 Route 70, and when</p> <p>6 it starts going from stop to stop.</p> <p>7 <b>Q. According to Mr. Morales, there's a</b></p> <p>8 <b>number of occasions where employees just don't</b></p> <p>9 <b>show up for work, throwers don't show up</b></p> <p>10 <b>unannounced. Do you agree that is a common</b></p> <p>11 <b>problem?</b></p> <p>12 A. That happens sometimes.</p> <p>13 <b>Q. According to Mr. Morales, it's a</b></p> <p>14 <b>pretty common problem. Do you agree with that?</b></p> <p>15 MS. TOMLJENOVIC: Objection to</p> <p>16 form.</p> <p>17 THE WITNESS: It happens</p> <p>18 sometimes, yeah.</p> <p>19 BY MR. SWIDLER:</p> <p>20 <b>Q. Okay.</b></p> <p>21 A. I mean, there are -- I don't know. I</p> <p>22 have 100 employees. Sometimes a guy doesn't</p> <p>23 come to work.</p> <p>24 <b>Q. You've testified during the union</b></p> <p>25 <b>proceedings that, in fact, you're generally not</b></p>   | <p style="text-align: right;">43</p> <p>1 <b>what we asked Mr. Morales -- if an employee,</b></p> <p>2 <b>say, in Vineland doesn't get on the garbage</b></p> <p>3 <b>truck when he is supposed to and the garbage</b></p> <p>4 <b>truck is supposed to meet him at his house at a</b></p> <p>5 <b>specific time, that employee is marked as</b></p> <p>6 <b>absent. Did you know that?</b></p> <p>7 MS. TOMLJENOVIC: Objection to</p> <p>8 form.</p> <p>9 THE WITNESS: I don't know how</p> <p>10 Mr. Morales does his own particular</p> <p>11 notes to himself. I only require</p> <p>12 that I know who I have to pay at the</p> <p>13 end of the week.</p> <p>14 BY MR. SWIDLER:</p> <p>15 <b>Q. If the employee is not at the exact</b></p> <p>16 <b>location where the garbage truck is to pick up</b></p> <p>17 <b>the employee at the time set in advance, the</b></p> <p>18 <b>employee is considered absent from work. Did</b></p> <p>19 <b>you know that? Do you agree with that?</b></p> <p>20 A. I don't know if I am going to agree</p> <p>21 to a statement someone else made.</p> <p>22 <b>Q. Let's forget it's a statement. Do</b></p> <p>23 <b>you agree that an employee -- let's just use a</b></p> <p>24 <b>hypothetical name. John Smith is getting</b></p> <p>25 <b>picked up from Vineland every day from his own</b></p> |
| <p style="text-align: right;">42</p> <p>1 <b>there at 5:00 in the morning and that, because</b></p> <p>2 <b>people don't show up for work, it's Mr.</b></p> <p>3 <b>Morales' job to sort of figure out who needs to</b></p> <p>4 <b>replace those throwers who don't show up. Is</b></p> <p>5 <b>that accurate, that it is Mr. Morales' job to</b></p> <p>6 <b>deal with an employee not showing up, a thrower</b></p> <p>7 <b>not showing up when he is supposed to come in</b></p> <p>8 <b>to work?</b></p> <p>9 A. Yes.</p> <p>10 <b>Q. And Mr. Morales has testified that</b></p> <p>11 <b>the way he finds out when an employee didn't</b></p> <p>12 <b>show up for work is that employee either</b></p> <p>13 <b>doesn't come to Hammonton when the employee is</b></p> <p>14 <b>supposed to come to Hammonton or the employee</b></p> <p>15 <b>is not at their house when the employee is</b></p> <p>16 <b>supposed to be picked up. Do you agree with</b></p> <p>17 <b>that?</b></p> <p>18 A. Sometimes.</p> <p>19 <b>Q. That is how Mr. Morales can figure</b></p> <p>20 <b>out if somebody is absent, correct?</b></p> <p>21 A. Sometimes. They also sometimes call</p> <p>22 him and say they are not coming in or they're</p> <p>23 not showing up.</p> <p>24 <b>Q. But if an employee doesn't get on the</b></p> <p>25 <b>garbage truck -- and this is the almost exactly</b></p> | <p style="text-align: right;">44</p> <p>1 <b>house to start working on the garbage route in</b></p> <p>2 <b>Vineland. John Smith's pickup time is 5:30</b></p> <p>3 <b>a.m. John Smith is not there at the pickup</b></p> <p>4 <b>time at 5:30 a.m. Do you agree that the</b></p> <p>5 <b>employee is absent from work?</b></p> <p>6 A. Yes.</p> <p>7 <b>Q. Okay. So the pickup time is the time</b></p> <p>8 <b>the employee is required to report, correct?</b></p> <p>9 A. With this particular gentleman in</p> <p>10 Vineland, yes.</p> <p>11 <b>Q. So if there is a specific pickup</b></p> <p>12 <b>time, that is the reporting time, correct?</b></p> <p>13 A. For that individual, yes.</p> <p>14 <b>Q. When would that individual's workday</b></p> <p>15 <b>start?</b></p> <p>16 A. When he started picking up garbage.</p> <p>17 <b>Q. So after his reporting time?</b></p> <p>18 MS. TOMLJENOVIC: Objection to</p> <p>19 form.</p> <p>20 THE WITNESS: I think I am not</p> <p>21 going to speculate.</p> <p>22 BY MR. SWIDLER:</p> <p>23 <b>Q. His work time, in your position,</b></p> <p>24 <b>would be after his reporting time, correct?</b></p> <p>25 A. No. His work time is sometime after</p>   |

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| <p style="text-align: right;">45</p> <p>1 his -- no. Rephrase. He starts work when he</p> <p>2 starts picking up garbage, that's --</p> <p>3 <b>Q. So I just want to bring that to its</b></p> <p>4 <b>conclusion and we will move on. Your position</b></p> <p>5 <b>is he starts work after he is required to</b></p> <p>6 <b>report on the garbage truck, correct?</b></p> <p>7 MS. TOMLJENOVIC: Objection to</p> <p>8 form.</p> <p>9 THE WITNESS: Or show up at his</p> <p>10 spot where he's supposed to be.</p> <p>11 BY MR. SWIDLER:</p> <p>12 <b>Q. In this particular employee, we have</b></p> <p>13 <b>established that he was supposed to report at a</b></p> <p>14 <b>specific time and if he is not there, he will</b></p> <p>15 <b>be marked absent. So he is supposed to be at</b></p> <p>16 <b>the pickup location in this hypothetical</b></p> <p>17 <b>example. But even for him, it's your position</b></p> <p>18 <b>that his workday wouldn't start until he</b></p> <p>19 <b>actually starts moving trash in the Vineland</b></p> <p>20 <b>residential route, correct?</b></p> <p>21 A. Yes.</p> <p>22 <b>Q. So that would be after his reporting</b></p> <p>23 <b>time, correct?</b></p> <p>24 MS. TOMLJENOVIC: Objection to</p> <p>25 form.</p> | <p style="text-align: right;">47</p> <p>1 And then Morales I --</p> <p>2 MR. SWIDLER: C -- that actually</p> <p>3 would be 1A. So it's just 1.</p> <p>4 MS. TOMLJENOVIC: Morales-1 is</p> <p>5 just a single page and it looks to be</p> <p>6 just the schedule marking how many</p> <p>7 days that pay period someone worked.</p> <p>8 MR. SWIDLER: Right.</p> <p>9 MS. TOMLJENOVIC: Okay.</p> <p>10 BY MR. SWIDLER:</p> <p>11 <b>Q. Now, prior to the GPS, these would be</b></p> <p>12 <b>the most accurate records South Jersey would</b></p> <p>13 <b>have regarding what time the truck drivers</b></p> <p>14 <b>worked, correct?</b></p> <p>15 A. Yes.</p> <p>16 <b>Q. It would also be the most accurate</b></p> <p>17 <b>records South Jersey has regarding which</b></p> <p>18 <b>throwers work with which truck drivers,</b></p> <p>19 <b>correct?</b></p> <p>20 A. Yes.</p> <p>21 <b>Q. And it would also be the most</b></p> <p>22 <b>accurate record showing which days of the week</b></p> <p>23 <b>the throwers worked, correct?</b></p> <p>24 A. Yes.</p> <p>25 <b>Q. And prior to the GPS being installed</b></p>   |
| <p style="text-align: right;">46</p> <p>1 THE WITNESS: Yes.</p> <p>2 BY MR. SWIDLER:</p> <p>3 <b>Q. Okay. Before the GPS records, GPS</b></p> <p>4 <b>devices were installed on the trucks, South</b></p> <p>5 <b>Jersey certainly would not have had more</b></p> <p>6 <b>accurate records than the records would show</b></p> <p>7 <b>when 1A, 1B, and 1C regarding the time when the</b></p> <p>8 <b>trucks left the yard and came back to the yard,</b></p> <p>9 <b>correct?</b></p> <p>10 A. Well, may I look at these?</p> <p>11 <b>Q. Oh, please.</b></p> <p>12 MS. TOMLJENOVIC: You want --</p> <p>13 MR. SWIDLER: They have been</p> <p>14 previously marked. If Mr. Colasurdo</p> <p>15 doesn't know what they are, since</p> <p>16 they are his own business documents,</p> <p>17 then I can discuss them further. But</p> <p>18 I will say for now, they were</p> <p>19 previously marked as Morales 1A, 1B,</p> <p>20 and 1C.</p> <p>21 MS. TOMLJENOVIC: For the</p> <p>22 record, Morales 1C looks to be the</p> <p>23 driver's time cards. Morales 1B</p> <p>24 looks to be the daily schedules</p> <p>25 previously supplied by defendant.</p>   | <p style="text-align: right;">48</p> <p>1 on the trucks, these would be the most accurate</p> <p>2 records you would have regarding the -- I am</p> <p>3 not saying they are exactly accurate, but it</p> <p>4 would be the most accurate records you have</p> <p>5 regarding the actual hours the throwers worked,</p> <p>6 correct?</p> <p>7 MS. TOMLJENOVIC: Objection to</p> <p>8 form. You can answer.</p> <p>9 THE WITNESS: Say that, again,</p> <p>10 please.</p> <p>11 BY MR. SWIDLER:</p> <p>12 <b>Q. I am going to rephrase it a little.</b></p> <p>13 <b>If one was trying to determine</b></p> <p>14 <b>how many hours the throwers worked, prior to</b></p> <p>15 <b>the GPS records being installed, these records</b></p> <p>16 <b>in front of you would be the most accurate</b></p> <p>17 <b>records available to us to try to determine how</b></p> <p>18 <b>many hours the throwers worked, correct?</b></p> <p>19 A. Yes.</p> <p>20 <b>Q. And your position is, though, that</b></p> <p>21 <b>there is now GPS installed sometime over the</b></p> <p>22 <b>last year or so and those records may be more</b></p> <p>23 <b>accurate than these; is that fair?</b></p> <p>24 A. Yes.</p> <p>25 <b>Q. And you now believe these GPS records</b></p> |

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| <p style="text-align: right;">49</p> <p>1 may be the most accurate records you have</p> <p>2 regarding the hours that the plaintiff in this</p> <p>3 action worked, correct?</p> <p>4 MS. TOMLJENOVIC: Objection to</p> <p>5 form.</p> <p>6 THE WITNESS: I do.</p> <p>7 MR. SWIDLER: Again, we are</p> <p>8 going to request these records. Do</p> <p>9 you intend to object to that request?</p> <p>10 MS. TOMLJENOVIC: Yes.</p> <p>11 MR. SWIDLER: Okay.</p> <p>12 MS. TOMLJENOVIC: And also to</p> <p>13 the three 30(b)6 depositions.</p> <p>14 MR. SWIDLER: Okay.</p> <p>15 BY MR. SWIDLER:</p> <p>16 Q. I'm going instruct you, and your</p> <p>17 attorney will explain this to you later, that</p> <p>18 whatever computer these files are saved on</p> <p>19 needs to be preserved. Needs to be preserved</p> <p>20 as of today. There are ways that -- and I know</p> <p>21 that your attorney is familiar with it --</p> <p>22 computers can be forensically copied, so to</p> <p>23 ensure that no data is lost and ensure it is</p> <p>24 all preserved properly. I am going to instruct</p> <p>25 you to do that. It may involve you,</p>   | <p style="text-align: right;">51</p> <p>1 BY MR. SWIDLER:</p> <p>2 Q. Okay. Now, according to your sworn</p> <p>3 Interrogatory responses, the throwers were, in</p> <p>4 essence, paid a daily rate and it was not</p> <p>5 material how many hours they worked each day,</p> <p>6 correct?</p> <p>7 A. Explain to me material. I am not</p> <p>8 sure.</p> <p>9 Q. It didn't change their compensation.</p> <p>10 A. Correct.</p> <p>11 Q. Okay. And the way you explained this</p> <p>12 in your Interrogatory is that it's based on</p> <p>13 approximately 10 hours per day, calculated</p> <p>14 would be in effect minimum wage and upon</p> <p>15 assumption an employee will be paid for eight</p> <p>16 hours at regular time minimum wage, two hours</p> <p>17 at an overtime rate, which is one and a half</p> <p>18 times the minimum wage, together with a daily</p> <p>19 incentive.</p> <p>20 Do you agree that that is how the</p> <p>21 daily rate is calculated?</p> <p>22 A. Yes. The 10 hours a day would be,</p> <p>23 like, a maximum. If a thrower worked six</p> <p>24 hours, he would get the same rate.</p> <p>25 Q. What happens --</p> |
| <p style="text-align: right;">50</p> <p>1 unfortunately, having to take the computer out</p> <p>2 of business for a little while, just probably</p> <p>3 for a few hours. It may also require that you</p> <p>4 change some internal preferences. If you have</p> <p>5 an IT person, you need to speak to that person</p> <p>6 to ensure the data does not self delete. Like</p> <p>7 I say, your attorney will discuss this with</p> <p>8 you, but I'm telling you this on the record</p> <p>9 now. And I do note it's 2:14 p.m. on Tuesday,</p> <p>10 February 19th.</p> <p>11 Based on the fact that, at least</p> <p>12 until the GPS records were installed, the</p> <p>13 records in front of you, which have been marked</p> <p>14 1,1B,and 1C, are the most accurate records that</p> <p>15 South Jersey has, you agree with me that even</p> <p>16 these records do not tell you the exact amount</p> <p>17 of hours any of the throwers worked, correct?</p> <p>18 A. Correct.</p> <p>19 Q. So you don't actually have any</p> <p>20 records regarding the exact amount of hours the</p> <p>21 throwers worked, at least up until a year ago</p> <p>22 or so, when the GPS was installed, correct?</p> <p>23 MS. TOMLJENOVIC: Objection to</p> <p>24 form. You can answer.</p> <p>25 THE WITNESS: Yes. Correct.</p> | <p style="text-align: right;">52</p> <p>1 A. That would be the part that would be</p> <p>2 the incentive. The incentive would change</p> <p>3 based upon the hours.</p> <p>4 Q. But what happens if the thrower works</p> <p>5 more than 10 hours?</p> <p>6 A. On a particular day?</p> <p>7 Q. On a particular day.</p> <p>8 A. If he worked six the next, he's paid</p> <p>9 for -- you know, he's doing well.</p> <p>10 Q. Okay. Let's say it's a strange week,</p> <p>11 very busy, he works 10 hours every day. Is it</p> <p>12 your testimony that can never happen, nobody</p> <p>13 could ever work 10 hours every day, five days</p> <p>14 in a week, no thrower?</p> <p>15 MS. TOMLJENOVIC: Objection to</p> <p>16 form.</p> <p>17 THE WITNESS: I am going to say</p> <p>18 that they could. In some instances,</p> <p>19 guys are even compensated more, if</p> <p>20 they do something extra.</p> <p>21 BY MR. SWIDLER:</p> <p>22 Q. I am not saying extra. I'm saying</p> <p>23 they do exactly what they are supposed to do,</p> <p>24 but the busy days mean they are working longer</p> <p>25 hours. How does your formula deal with that</p>       |

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| <p style="text-align: right;">53</p> <p>1 <b>situation? Is that what the incentive is for?</b></p> <p>2 A. If a thrower were to work -- since</p> <p>3 you said, not extra -- but if they were to work</p> <p>4 longer days, then we would, in our opinion --</p> <p>5 and you have payroll records that you've</p> <p>6 subpoenaed of ours to see -- some guys got paid</p> <p>7 extra money for particular days, because they</p> <p>8 did work longer or do more. I mean, those two</p> <p>9 tend to go hand in hand. If they work longer,</p> <p>10 they do more.</p> <p>11 <b>Q. When you say they get paid more, you</b></p> <p>12 <b>mean the daily rate would be increase?</b></p> <p>13 A. Some guys get extra incentive put on</p> <p>14 their daily rate that particular day.</p> <p>15 <b>Q. Who decides if that's going to</b></p> <p>16 <b>happen?</b></p> <p>17 A. Edwin, myself.</p> <p>18 <b>Q. Is that discretionary?</b></p> <p>19 A. What does that mean?</p> <p>20 <b>Q. In other words, do you have an</b></p> <p>21 <b>exclusive agreement with throwers that if they</b></p> <p>22 <b>work more than X hours they will get X extra</b></p> <p>23 <b>dollars added to their incentive, or is it a</b></p> <p>24 <b>discretionary amount?</b></p> <p>25 A. It's a discretionary amount.</p>   | <p style="text-align: right;">55</p> <p>1 <b>us the extra hours the employee worked?</b></p> <p>2 A. Since there are no record hours,</p> <p>3 that, I cannot do.</p> <p>4 <b>Q. Are there some occasions where</b></p> <p>5 <b>throwers come back to the Hammonton yard and</b></p> <p>6 <b>then on request get to do another assignment?</b></p> <p>7 A. Rephrase that.</p> <p>8 <b>Q. Are there occasions where a thrower,</b></p> <p>9 <b>perhaps to get an incentive bonus, an extra</b></p> <p>10 <b>incentive bonus, returns to the Hammonton</b></p> <p>11 <b>yard at the end of the -- I don't want to call</b></p> <p>12 <b>it mornings, I know it goes to midafternoon --</b></p> <p>13 <b>but the first truck pickup, I am going to call</b></p> <p>14 <b>it the morning pickup, but we will both know</b></p> <p>15 <b>that the trucks may return after 12:00.</b></p> <p>16 A. I understand.</p> <p>17 <b>Q. So the thrower comes back to the</b></p> <p>18 <b>Hammonton yard after that first route. Are</b></p> <p>19 <b>there occasions where that thrower, either</b></p> <p>20 <b>because you need him or he requests it, gets to</b></p> <p>21 <b>go back out on another route?</b></p> <p>22 A. In the event that there are short</p> <p>23 routes, we may have a thrower work another</p> <p>24 route to complete a full day, yes.</p> <p>25 <b>Q. Does South Jersey keep track of when</b></p> |
| <p style="text-align: right;">54</p> <p>1 <b>Q. So there is a guaranteed daily rate,</b></p> <p>2 <b>correct?</b></p> <p>3 A. Yes.</p> <p>4 <b>Q. And that amount is guaranteed, if</b></p> <p>5 <b>they work a day they will make that much money,</b></p> <p>6 <b>regardless of the hours they work, correct?</b></p> <p>7 A. Yes.</p> <p>8 <b>Q. But then there is a discretionary</b></p> <p>9 <b>amount that sometimes you or Mr. Morales adds</b></p> <p>10 <b>to that and that discretionary amount is just</b></p> <p>11 <b>basically because you recognize they worked</b></p> <p>12 <b>even longer might normally be required?</b></p> <p>13 A. That is one instance. Another</p> <p>14 instance would be, I want to keep them happy.</p> <p>15 The next time we need them to do more, they</p> <p>16 need to know that there is -- again, I use the</p> <p>17 word, more, again and you're more interested in</p> <p>18 time. But the next time we need them to do</p> <p>19 something that would require them to work</p> <p>20 longer, they know they are going to make more</p> <p>21 money. And they always have the option of</p> <p>22 requesting more based upon what they did.</p> <p>23 <b>Q. How do you keep track if an employee</b></p> <p>24 <b>does more, other than through a discretionary</b></p> <p>25 <b>bonus? Are there any records that would show</b></p> | <p style="text-align: right;">56</p> <p>1 <b>those occurrences happen?</b></p> <p>2 A. No.</p> <p>3 <b>Q. And you don't know when those</b></p> <p>4 <b>occurrences have happened by memory, do you?</b></p> <p>5 MS. TOMLJENOVIC: Objection to</p> <p>6 form.</p> <p>7 THE WITNESS: Not by memory. I</p> <p>8 will say, there are a couple of</p> <p>9 routes that are just shorter in</p> <p>10 nature and, when there's something</p> <p>11 that might require a hour or</p> <p>12 something, that's the first truck in</p> <p>13 and they would go and get it.</p> <p>14 BY MR. SWIDLER:</p> <p>15 <b>Q. Which routes are shorter?</b></p> <p>16 A. They change. There is seasonality.</p> <p>17 There is -- there are a lot of variables into</p> <p>18 the residential pickup.</p> <p>19 <b>Q. I just asked you from memory and you</b></p> <p>20 <b>said, not from memory, but I could figure it</b></p> <p>21 <b>out, basically. And I know I'm paraphrasing,</b></p> <p>22 <b>but that is essentially what you said. I am</b></p> <p>23 <b>trying to see how I could figure it out. What</b></p> <p>24 <b>routes would you look for to determine that</b></p> <p>25 <b>these are the routes that a thrower may have</b></p>  |

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| <p style="text-align: right;">57</p> <p>1     <b>been given an extra hour or two after he</b><br/> 2     <b>completed the route?</b><br/> 3         A. There is not a formula. There is<br/> 4     not -- I don't have the word I want to use. I<br/> 5     apologize.<br/> 6         <b>Q. That's all right. Would there be</b><br/> 7     <b>specific instances where I could ask you, did</b><br/> 8     <b>this particular person work another route? The</b><br/> 9     <b>answer is, South Jersey wouldn't know, because</b><br/> 10    <b>the records don't exist. You would just sort</b><br/> 11    <b>of know, maybe like in a court, on a</b><br/> 12    <b>probabilistic framework, this route tends to be</b><br/> 13    <b>shorter, so this person may have gone out</b><br/> 14    <b>again; is that fair?</b><br/> 15         A. That part would be fair. And in the<br/> 16     event there is a short route and there is<br/> 17     another route that might need to be covered, we<br/> 18     may have scheduled a second helper or thrower<br/> 19     on that route, so that one man isn't doing more<br/> 20     than what one man should really do.<br/> 21         <b>Q. I understand. But you don't have</b><br/> 22    <b>records or recollection or really even the</b><br/> 23    <b>ability now to look back over the last three or</b><br/> 24    <b>four years and figure out on what specific</b><br/> 25    <b>occasions which throwers worked two routes,</b></p> | <p style="text-align: right;">59</p> <p>1     work. It is also factored in that<br/> 2     there will be some overtime. And a<br/> 3     guy who doesn't work any overtime but<br/> 4     works five days and they are all<br/> 5     short, he makes the same money. He<br/> 6     makes -- if a man works faster than<br/> 7     someone else, so he works less hours,<br/> 8     I am not going to penalize him by<br/> 9     paying him less.<br/> 10    BY MR. SWIDLER:<br/> 11         <b>Q. But my question, in your mind, if you</b><br/> 12    <b>learned and -- this is a hypothetical. If you</b><br/> 13    <b>learned that an employee, one of your throwers,</b><br/> 14    <b>specifically, by the way you define the</b><br/> 15    <b>workday, worked 45 hours in a week, that is</b><br/> 16    <b>consistent with the amount they were paid for</b><br/> 17    <b>that week, because they were paid, in essence,</b><br/> 18    <b>for 10 hours each day. So they were paid for</b><br/> 19    <b>50 hours in the way you have calculated the</b><br/> 20    <b>daily rate, correct?</b><br/> 21         MS. TOMLJENOVIC: Objection to<br/> 22     form.<br/> 23         THE WITNESS: Based upon your<br/> 24     hypothetical right there, I will say<br/> 25     yes.</p>                                |
| <p style="text-align: right;">58</p> <p>1     <b>correct?</b><br/> 2         MS. TOMLJENOVIC: Objection to<br/> 3     form.<br/> 4         THE WITNESS: Not without<br/> 5     looking over every sheet and form.<br/> 6     And there will be some guesswork<br/> 7     involved. That is the only way I can<br/> 8     answer your question.<br/> 9     BY MR. SWIDLER:<br/> 10         <b>Q. I think you answered it. Okay.</b><br/> 11         <b>Now, even though I understand</b><br/> 12    <b>that it is your position that the throwers</b><br/> 13    <b>don't work the entire time they are on the</b><br/> 14    <b>truck, you still would agree that your formula</b><br/> 15    <b>builds in the potential for them to work</b><br/> 16    <b>overtime, correct?</b><br/> 17         A. Say that again.<br/> 18         <b>Q. Your daily rate is based on an</b><br/> 19    <b>assumption that they will work, in essence, 50</b><br/> 20    <b>hours a week, correct?</b><br/> 21         MS. TOMLJENOVIC: Objection to<br/> 22     form.<br/> 23         THE WITNESS: The formula is<br/> 24     based that there are going to be a<br/> 25     certain number of hours that they</p>   | <p style="text-align: right;">60</p> <p>1     BY MR. SWIDLER:<br/> 2         <b>Q. So if a thrower worked 45 hours in a</b><br/> 3    <b>week and was paid a daily rate of \$100 per day</b><br/> 4    <b>and worked five days that week, your position</b><br/> 5    <b>would be that he was paid and was paid overtime</b><br/> 6    <b>for the five extra hours, correct?</b><br/> 7         A. Yes.<br/> 8         <b>Q. And that's because, in essence, your</b><br/> 9    <b>position is that he was paid minimum wage for</b><br/> 10   <b>the first 40, time and a half for hours 40 to</b><br/> 11   <b>45, and then an incentive to equal the</b><br/> 12   <b>difference, because he was actually paid more</b><br/> 13   <b>than minimum wage and time and a half and</b><br/> 14   <b>minimum wage, correct?</b><br/> 15         A. That is correct.<br/> 16         <b>Q. Do you understand whether the law,</b><br/> 17    <b>the Fair Labor Standards Act, requires you to</b><br/> 18    <b>pay some employees more than time and a half of</b><br/> 19    <b>minimum wage for hours over 40? Do you know if</b><br/> 20    <b>it does?</b><br/> 21         MS. TOMLJENOVIC: Objection to<br/> 22     form.<br/> 23         THE WITNESS: Say that again,<br/> 24     please.<br/> 25     BY MR. SWIDLER:</p> |

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| <p style="text-align: right;">61</p> <p>1 <b>Q. Do you know whether the Fair Labor</b><br/> 2 <b>Standards Act can require you to pay an</b><br/> 3 <b>employee more than time and a half of minimum</b><br/> 4 <b>wage for hours worked over 40 if the employee</b><br/> 5 <b>earns more than minimum wage? Do you know if</b><br/> 6 <b>that is the case?</b><br/> 7 MS. TOMLJENOVIC: Objection to<br/> 8 form.<br/> 9 THE WITNESS: I don't know.<br/> 10 BY MR. SWIDLER:<br/> 11 <b>Q. Have you --</b><br/> 12 A. And I will offer this to maybe speed<br/> 13 you along or help you get a sense of what we<br/> 14 do.<br/> 15 MS. TOMLJENOVIC: There is no<br/> 16 question pending. Let him just ask.<br/> 17 THE WITNESS: I know. I need to<br/> 18 do this, though. We called the<br/> 19 Department of Labor and told them how<br/> 20 we compensate employees and we were<br/> 21 told, as long as it was minimum wage<br/> 22 and time and a half over 40, we would<br/> 23 be in compliance.<br/> 24 BY MR. SWIDLER:<br/> 25 <b>Q. Well, you were actually asked almost</b></p>   | <p style="text-align: right;">63</p> <p>1 <b>Q. Who is your accountant?</b><br/> 2 A. Richard Malesich.<br/> 3 <b>Q. You don't actually know if Richard</b><br/> 4 <b>asked if a daily rate was okay or if he asked</b><br/> 5 <b>if time and a half over 40 at minimum wage was</b><br/> 6 <b>okay, because you didn't make the call,</b><br/> 7 <b>correct?</b><br/> 8 MS. TOMLJENOVIC: Objection<br/> 9 form.<br/> 10 THE WITNESS: I don't recall<br/> 11 exactly what he said.<br/> 12 BY MR. SWIDLER:<br/> 13 <b>Q. It wasn't, like, on speakerphone and</b><br/> 14 <b>you were in the room? You heard of this phone</b><br/> 15 <b>call through Richard telling you after the</b><br/> 16 <b>fact, correct?</b><br/> 17 A. Correct.<br/> 18 <b>Q. I don't mean with respect to this</b><br/> 19 <b>litigation and I certainly don't mean with</b><br/> 20 <b>respect to any allegations made in this</b><br/> 21 <b>lawsuit, but prior to this lawsuit having been</b><br/> 22 <b>filed, did you ever consult with any legal</b><br/> 23 <b>expert, attorney, or any other person regarding</b><br/> 24 <b>the pay practices of South Jersey Sanitation?</b><br/> 25 MS. TOMLJENOVIC: Objection to</p> |
| <p style="text-align: right;">62</p> <p>1 <b>that exact question by my law partner in your</b><br/> 2 <b>last deposition. You said that you were told</b><br/> 3 <b>that a daily rate was an okay way to pay</b><br/> 4 <b>employees. But you testified that you didn't</b><br/> 5 <b>tell the DOL that the employees worked more</b><br/> 6 <b>than 40 hours a week. So I just want to be</b><br/> 7 <b>clear. Is it your testimony that you told you</b><br/> 8 <b>DOL that the throwers worked more than 40 hours</b><br/> 9 <b>per week?</b><br/> 10 MS. TOMLJENOVIC: Objection to<br/> 11 form. You can answer.<br/> 12 THE WITNESS: I maybe didn't say<br/> 13 it, but I think I did. But that's<br/> 14 how we do it, regardless of what the<br/> 15 court reporter put down or I didn't<br/> 16 say, but that's how it's done.<br/> 17 BY MR. SWIDLER:<br/> 18 <b>Q. I am not asking how it's done.</b><br/> 19 A. If that is how I said it and that's<br/> 20 how it was said.<br/> 21 <b>Q. Which Department of Labor did you</b><br/> 22 <b>call?</b><br/> 23 A. I didn't make the call myself.<br/> 24 <b>Q. Who did?</b><br/> 25 A. My accountant.</p> | <p style="text-align: right;">64</p> <p>1 form. That is privileged.<br/> 2 MR. SWIDLER: It probably is.<br/> 3 Let me rephrase it.<br/> 4 BY MR. SWIDLER:<br/> 5 <b>Q. When creating and implementing your</b><br/> 6 <b>wage and hour policies with respect to the</b><br/> 7 <b>throwers and your daily rate, did you consult</b><br/> 8 <b>with any attorneys?</b><br/> 9 MS. TOMLJENOVIC: You can say<br/> 10 whether you consulted, but you can't<br/> 11 say anything that was said or<br/> 12 discussed with any attorney.<br/> 13 THE WITNESS: I don't remember.<br/> 14 BY MR. SWIDLER:<br/> 15 <b>Q. Did you do any of your own</b><br/> 16 <b>independent research on the Internet or,</b><br/> 17 <b>really, any way you might do research, to</b><br/> 18 <b>determine if your wage and hour policies were</b><br/> 19 <b>compliant with the law?</b><br/> 20 MS. TOMLJENOVIC: At any point<br/> 21 in time?<br/> 22 MR. SWIDLER: Yes. Now I am<br/> 23 going to say at any point in time.<br/> 24 BY MR. SWIDLER:<br/> 25 <b>Q. And this probably goes without</b></p>  |

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| <p style="text-align: right;">65</p> <p>1 <b>saying. I am not asking about discussions you</b><br/> 2 <b>had with counsel, especially in regards to this</b><br/> 3 <b>lawsuit. I just want to know, in your own</b><br/> 4 <b>independent accord, did you ever try to do your</b><br/> 5 <b>own research?</b><br/> 6 MS. TOMLJENOVIC: Objection to<br/> 7 form. But answer, if you can.<br/> 8 THE WITNESS: I don't remember.<br/> 9 BY MR. SWIDLER:<br/> 10 <b>Q. Okay.</b><br/> 11 A. The reason being, it's been a long<br/> 12 time. I have been in business a long time. I<br/> 13 don't know what I might have did ten years ago<br/> 14 or five years ago.<br/> 15 <b>Q. How long has this policy been in</b><br/> 16 <b>effect, this sort of daily rate with the -- can</b><br/> 17 <b>I call it a split day? You have eight hours</b><br/> 18 <b>and two hours of overtime. Can I call it,</b><br/> 19 <b>like, a split day policy?</b><br/> 20 MS. TOMLJENOVIC: Objection to<br/> 21 form.<br/> 22 THE WITNESS: I don't think<br/> 23 that's fair. I think a day rate is<br/> 24 probably -- is what I call it.<br/> 25 BY MR. SWIDLER:</p> | <p style="text-align: right;">67</p> <p>1 hours for me, he is still getting<br/> 2 much more than \$56.<br/> 3 BY MR. SWIDLER:<br/> 4 <b>Q. I will represent to you -- you can</b><br/> 5 <b>just take this as true, because when I say I</b><br/> 6 <b>represent to you, it doesn't mean you have to</b><br/> 7 <b>agree with me. It means, for the purposes of</b><br/> 8 <b>answering the question, I want you to assume</b><br/> 9 <b>this is true.</b><br/> 10 A. Okay.<br/> 11 <b>Q. If you paid somebody a daily rate and</b><br/> 12 <b>you didn't distinguish between overtime and</b><br/> 13 <b>regular time, you didn't do any of that, and</b><br/> 14 <b>that person worked for you 60 hours a week and</b><br/> 15 <b>you paid them for five days, so they worked 12</b><br/> 16 <b>hours a day, and the person is nonexempt, you</b><br/> 17 <b>would owe that person overtime. Okay? So my</b><br/> 18 <b>understanding as to the way -- one of the</b><br/> 19 <b>positions of South Jersey is that, one of the</b><br/> 20 <b>reasons they don't owe overtime to the clients</b><br/> 21 <b>is because they already paid overtime, it's</b><br/> 22 <b>included in the daily rate. Is that an</b><br/> 23 <b>accurate understanding?</b><br/> 24 MS. TOMLJENOVIC: Objection to<br/> 25 form.</p> |
| <p style="text-align: right;">66</p> <p>1 <b>Q. If it's just a day rate, is any money</b><br/> 2 <b>paid for overtime compensation in that day</b><br/> 3 <b>rate?</b><br/> 4 A. It's built into the overall<br/> 5 compensation.<br/> 6 <b>Q. Okay. It's built in, because two</b><br/> 7 <b>hours is considered overtime, correct?</b><br/> 8 MS. TOMLJENOVIC: Objection to<br/> 9 form.<br/> 10 THE WITNESS: At least two<br/> 11 hours, yeah. I mean, there is a --<br/> 12 there is a standard to pay employees<br/> 13 a certain dollar figure for them to<br/> 14 work, for them to do a job, to make<br/> 15 it favorable for them to work for me<br/> 16 as opposed to a construction job or a<br/> 17 landscaper or for another garbage<br/> 18 company. It's really how we come up<br/> 19 with it. To say that it was minimum<br/> 20 wage, minimum wage times eight hours<br/> 21 a day is not any money. It's \$56, I<br/> 22 think. I pay them much more than<br/> 23 that. There's a lot overtime into<br/> 24 that eight-hour day that I just<br/> 25 described. But if a guy works eight</p>   | <p style="text-align: right;">68</p> <p>1 BY MR. SWIDLER:<br/> 2 <b>Q. The last part, is it accurate that</b><br/> 3 <b>one of your positions is you have already paid</b><br/> 4 <b>the plaintiffs in this case overtime because</b><br/> 5 <b>the daily rate includes it?</b><br/> 6 A. The daily rate does include a certain<br/> 7 number of overtime hours, based upon whether<br/> 8 they have it or not, whether they have the<br/> 9 overtime hours or not, they still get<br/> 10 compensated.<br/> 11 <b>Q. So, in a sense, it splits the day</b><br/> 12 <b>between eight hours of regular and two hours of</b><br/> 13 <b>overtime; is that fair?</b><br/> 14 MS. TOMLJENOVIC: Objection to<br/> 15 form.<br/> 16 THE WITNESS: It's not really<br/> 17 fair, because they get paid overtime<br/> 18 based on a 40-hour week.<br/> 19 BY MR. SWIDLER:<br/> 20 <b>Q. Right.</b><br/> 21 A. It's not overtime after eight hours.<br/> 22 <b>Q. Well, most throwers -- I know there</b><br/> 23 <b>are exceptions, but even I recognize, most of</b><br/> 24 <b>the throwers are working five days a week, not</b><br/> 25 <b>six, correct?</b></p>   |

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| <p style="text-align: right;">69</p> <p>1 A. I wouldn't even say that most of them</p> <p>2 work five. But there is some number that work</p> <p>3 five, let's put it that way. Some work less</p> <p>4 than five.</p> <p>5 <b>Q. It's rare that they work six?</b></p> <p>6 A. Right.</p> <p>7 <b>Q. We have seen the records. I</b></p> <p>8 <b>understand that. It's rare they work six. You</b></p> <p>9 <b>agree with that?</b></p> <p>10 A. Yes.</p> <p>11 <b>Q. It's not as rare that they would work</b></p> <p>12 <b>five days per week, correct?</b></p> <p>13 A. Not as rare as six, correct.</p> <p>14 <b>Q. If they worked five days and they</b></p> <p>15 <b>worked less than 50 hours, the position of</b></p> <p>16 <b>South Jersey is they have already been paid for</b></p> <p>17 <b>any overtime they may have worked, because,</b></p> <p>18 <b>when they work five days at the daily rate,</b></p> <p>19 <b>they are already being paid in essence for 10</b></p> <p>20 <b>overtime hours for that week, whether they work</b></p> <p>21 <b>them or not?</b></p> <p>22 A. Yes.</p> <p>23 MS. TOMLJENOVIC: Objection.</p> <p>24 BY MR. SWIDLER:</p> <p>25 <b>Q. How do you calculate what the</b></p>   | <p style="text-align: right;">71</p> <p>1 form.</p> <p>2 THE WITNESS: I am not sure</p> <p>3 which came first, as I go back in my</p> <p>4 brain, the chicken or the egg,</p> <p>5 Justin. But it was a methodology</p> <p>6 used to fairly compensate, in my</p> <p>7 head, to fairly compensate and to</p> <p>8 make those workers work for South</p> <p>9 Jersey Sanitation and not someone</p> <p>10 else.</p> <p>11 BY MR. SWIDLER:</p> <p>12 <b>Q. Right. I understand the purpose of</b></p> <p>13 <b>it. But --</b></p> <p>14 A. If you work one day, Justin, you got</p> <p>15 paid the day rate, the \$100 rate. You had no</p> <p>16 overtime, but you still got -- so the</p> <p>17 calculation is different. There are guys that</p> <p>18 only want to work a couple of days a week and</p> <p>19 they are happy with that. I don't understand.</p> <p>20 <b>Q. Rather than ask you how it first</b></p> <p>21 <b>started ten or more years ago, these days, like</b></p> <p>22 <b>recently, when you calculate a person's pay,</b></p> <p>23 <b>you start with how many days per week did they</b></p> <p>24 <b>work, right, you multiply that by the daily</b></p> <p>25 <b>rate, and then, when sort of breaking it down,</b></p>         |
| <p style="text-align: right;">70</p> <p>1 incentive amount is each week? I don't need</p> <p>2 the discretionary part. Again, this is your</p> <p>3 Interrogatory. They get paid eight hours of</p> <p>4 regular time, which is minimum wage, two hours</p> <p>5 as an overtime rate, which is one and a half</p> <p>6 times the minimum, together with a daily</p> <p>7 incentive amount. How do you calculate that</p> <p>8 daily incentive amount?</p> <p>9 A. It's actually a float. It's not the</p> <p>10 same. That incentive amount, whatever that</p> <p>11 number is, changes by the base of whatever the</p> <p>12 baseline was of the hours that they worked to</p> <p>13 begin with. If a man worked four days, he</p> <p>14 still is getting that built-in overtime, so</p> <p>15 therefore, his incentive rate would be higher.</p> <p>16 <b>Q. So in other words, the incentive rate</b></p> <p>17 <b>is sort of -- it's like an X to get you to the</b></p> <p>18 <b>final number --</b></p> <p>19 A. We back to a formula to give that</p> <p>20 worker that dollar figure, correct.</p> <p>21 <b>Q. But the formula starts with the</b></p> <p>22 <b>dollar figure that they are going to earn and</b></p> <p>23 <b>then it works backwards to describe how it got</b></p> <p>24 <b>there; is that accurate?</b></p> <p>25 MS. TOMLJENOVIC: Objection to</p> | <p style="text-align: right;">72</p> <p>1 you add to that, well, this is really based on</p> <p>2 minimum wage, time and a half, and an incentive</p> <p>3 amount, but the total compensation starts with</p> <p>4 number of days times the daily rate, correct?</p> <p>5 MS. TOMLJENOVIC: Objection to</p> <p>6 form.</p> <p>7 THE WITNESS: Yes. If I have to</p> <p>8 explain how we got there, that's how</p> <p>9 we got there.</p> <p>10 BY MR. SWIDLER:</p> <p>11 <b>Q. By way of example, if I asked you</b></p> <p>12 <b>hypothetically that, let's say John Smith</b></p> <p>13 <b>worked 42 hours for your company over the</b></p> <p>14 <b>course of a week and his daily rate was \$100,</b></p> <p>15 <b>that wouldn't be enough, still, for you to</b></p> <p>16 <b>calculate how much he was earning, correct,</b></p> <p>17 <b>because you don't have the amount of days that</b></p> <p>18 <b>he worked, which is a requirement to figure out</b></p> <p>19 <b>how much you owe him, correct?</b></p> <p>20 MS. TOMLJENOVIC: Objection to the</p> <p>21 form.</p> <p>22 THE WITNESS: No. I disagree.</p> <p>23 I have the number of days he worked.</p> <p>24 BY MR. SWIDLER:</p> <p>25 <b>Q. I am just trying to figure out how</b></p> |

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| <p style="text-align: right;">73</p> <p>1 the formula works. The only two pieces of</p> <p>2 information that you require to determine how</p> <p>3 much you owe an employee is number of days</p> <p>4 worked during the week and the daily rate?</p> <p>5 Those are the only two pieces of information</p> <p>6 you need, correct?</p> <p>7 MS. TOMLJENOVIC: Objection to</p> <p>8 form.</p> <p>9 THE WITNESS: Yes.</p> <p>10 BY MR. SWIDLER:</p> <p>11 Q. Number of hours and incentive rate,</p> <p>12 that is just there to sort of justify the</p> <p>13 number that is already determined by the daily</p> <p>14 rate and the number of days worked, correct?</p> <p>15 MS. TOMLJENOVIC: Objection to</p> <p>16 form.</p> <p>17 THE WITNESS: I am going to</p> <p>18 disagree with the way you're phrasing</p> <p>19 it.</p> <p>20 BY MR. SWIDLER:</p> <p>21 Q. How would you phrase it?</p> <p>22 A. It was designed to fairly compensate</p> <p>23 an employee.</p> <p>24 Q. I know. I am not asking about</p> <p>25 whether it's fair, whether you're paying more</p>                        | <p style="text-align: right;">75</p> <p>1 question. What do you want</p> <p>2 rephrased?</p> <p>3 BY MR. SWIDLER:</p> <p>4 Q. The question is, whether these</p> <p>5 variables of regular hours worked, overtime</p> <p>6 hours, and incentive, if that really helps you</p> <p>7 calculate the wages or if the only thing you're</p> <p>8 really looking at is daily rate and days</p> <p>9 worked?</p> <p>10 MS. TOMLJENOVIC: Are you</p> <p>11 talking about per week, per person?</p> <p>12 MR. SWIDLER: Yes.</p> <p>13 MS. TOMLJENOVIC: I object to</p> <p>14 form. Mischaracterizes his earlier</p> <p>15 testimony.</p> <p>16 BY MR. SWIDLER:</p> <p>17 Q. I have given you the opportunity to</p> <p>18 answer however you think is best. I am not</p> <p>19 trying to mischaracterize your testimony.</p> <p>20 A. I am just trying to figure the best</p> <p>21 way to explain it to you so we can move on. I</p> <p>22 know I wasn't keeping hourly records for the</p> <p>23 helpers, throwers. And in order to compensate</p> <p>24 them so that it was fair, we did make the phone</p> <p>25 call to the Department of Labor. And my</p>  |
| <p style="text-align: right;">74</p> <p>1 than the minimum wage. My question is, if you</p> <p>2 have to figure out a person's compensation,</p> <p>3 you've already answered, there is only two</p> <p>4 things you need, number of days worked and the</p> <p>5 daily rate. You multiple those together, that</p> <p>6 is how much you owe the person for the week,</p> <p>7 correct?</p> <p>8 A. Right.</p> <p>9 MS. TOMLJENOVIC: Objection to</p> <p>10 form.</p> <p>11 BY MR. SWIDLER:</p> <p>12 Q. And this explanation about that they</p> <p>13 are really paid for ten hours, eight of which</p> <p>14 is regular, two of which is overtime, and then</p> <p>15 an incentive amount, that's after the fact?</p> <p>16 You have already decided how much they're</p> <p>17 earning, correct?</p> <p>18 MS. TOMLJENOVIC: Objection to</p> <p>19 form.</p> <p>20 THE WITNESS: I can't answer</p> <p>21 that question that way. It's not a</p> <p>22 fair presentation --</p> <p>23 BY MR. SWIDLER:</p> <p>24 Q. Just tell me how you would phrase it.</p> <p>25 MS. TOMLJENOVIC: What is the</p> | <p style="text-align: right;">76</p> <p>1 formula, the way I came up with this years ago,</p> <p>2 was that they have a minimum wage and they had</p> <p>3 an incentive on top of that so they would work</p> <p>4 to get -- so it was fair, so a man would work</p> <p>5 for me. To work out the numbers as to what is</p> <p>6 overtime, it was difficult, because not</p> <p>7 everyone works a certain -- there is not a set</p> <p>8 time. But I knew it would be okay if I</p> <p>9 overcompensated them, because that's not a</p> <p>10 problem. There still wasn't a record kept and</p> <p>11 that was a problem. And I have to figure out a</p> <p>12 way to correct that and I will get there. But</p> <p>13 that is how I came up with it. I can't answer</p> <p>14 it any other way.</p> <p>15 Q. You understand now that you need to</p> <p>16 keep hourly records for the throwers? Sitting</p> <p>17 here today, you understand that?</p> <p>18 MS. TOMLJENOVIC: Objection to</p> <p>19 form.</p> <p>20 THE WITNESS: I understand that</p> <p>21 if I did that we wouldn't be having</p> <p>22 this discussion. I also understand</p> <p>23 that my helpers don't want to be paid</p> <p>24 hourly, the majority of them. You</p> <p>25 have deposed several of them. They</p> |

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| <p style="text-align: right;">77</p> <p>1 know that this is an issue. Word is</p> <p>2 that they don't want this, the</p> <p>3 majority of my helpers, because they</p> <p>4 recognize that they are not going to</p> <p>5 make any money in most of the year if</p> <p>6 I paid them straight hourly wage.</p> <p>7 BY MR. SWIDLER:</p> <p>8 <b>Q. I suppose it would depend what their</b></p> <p>9 <b>hourly rate was.</b></p> <p>10 A. If it was minimum wage.</p> <p>11 <b>Q. Well, I agreed you paid them more</b></p> <p>12 <b>than minimum wage. For the most part, there is</b></p> <p>13 <b>no allegation in this lawsuit that you paid</b></p> <p>14 <b>under minimum wage, except maybe for a few</b></p> <p>15 <b>weeks.</b></p> <p>16 Let me ask you this, even if we</p> <p>17 use your definition of when the workday starts</p> <p>18 and when the workday ends -- I actually didn't</p> <p>19 ask you when the workday ends. We didn't</p> <p>20 actually go there. When does the workday end,</p> <p>21 in your mind, for a thrower?</p> <p>22 A. When they have completed their last</p> <p>23 pickup of the day.</p> <p>24 <b>Q. So the final residence?</b></p> <p>25 A. Yes.</p> | <p style="text-align: right;">79</p> <p>1 not a record that says, Justin,</p> <p>2 Hours, correct.</p> <p>3 MR. SWIDLER: Okay.</p> <p>4 - - -</p> <p>5 (Whereupon, a recess was held from</p> <p>6 2:43 p.m. to 2:48 p.m.)</p> <p>7 - - -</p> <p>8 BY MR. SWIDLER:</p> <p>9 <b>Q. Is Mr. Malesich still your</b></p> <p>10 <b>accountant?</b></p> <p>11 A. Yes.</p> <p>12 <b>Q. And how long has he been your</b></p> <p>13 <b>accountant?</b></p> <p>14 A. Over 10 years.</p> <p>15 <b>Q. And I think you answered this. When</b></p> <p>16 <b>I say, your, I mean South Jersey's accountant.</b></p> <p>17 A. Correct.</p> <p>18 <b>Q. He has been South Jersey's</b></p> <p>19 <b>accountant?</b></p> <p>20 A. Yes.</p> <p>21 <b>Q. And he has been South Jersey's</b></p> <p>22 <b>accountant for more than 10 years?</b></p> <p>23 A. Yes.</p> <p>24 <b>Q. Did he ever raise concerns with you</b></p> <p>25 <b>regarding the way you pay your employees?</b></p>   |
| <p style="text-align: right;">78</p> <p>1 <b>Q. So the way you define the workday, it</b></p> <p>2 <b>starts at the very first residence that they</b></p> <p>3 <b>pick up trash in and ends at the very final</b></p> <p>4 <b>residence that they pick up trash in; is that</b></p> <p>5 <b>fair?</b></p> <p>6 A. Yes.</p> <p>7 <b>Q. Even using that definition, there are</b></p> <p>8 <b>still weeks where some throwers will work more</b></p> <p>9 <b>than 40 hours, correct?</b></p> <p>10 MS. TOMLJENOVIC: Objection to</p> <p>11 form.</p> <p>12 THE WITNESS: More than 40</p> <p>13 hours? Yes.</p> <p>14 BY MR. SWIDLER:</p> <p>15 <b>Q. And your formula, again, is designed</b></p> <p>16 <b>to pay them for that, correct?</b></p> <p>17 A. And pay them for the 40 and beyond.</p> <p>18 <b>Q. Not to be repetitive, but you don't</b></p> <p>19 <b>have accurate records showing you which weeks</b></p> <p>20 <b>to which throwers that would have occurred for,</b></p> <p>21 <b>other than maybe the GPS records, maybe?</b></p> <p>22 MS. TOMLJENOVIC: Objection to</p> <p>23 form.</p> <p>24 THE WITNESS: Justin, if you</p> <p>25 worked for me as a thrower, there is</p>        | <p style="text-align: right;">80</p> <p>1 A. We talk about many things. I don't</p> <p>2 recall.</p> <p>3 <b>Q. I mean, you just don't recall him</b></p> <p>4 <b>ever telling you whether he thinks the way you</b></p> <p>5 <b>compensate the employees is legal or not?</b></p> <p>6 MS. TOMLJENOVIC: Objection to</p> <p>7 form.</p> <p>8 THE WITNESS: I don't recall</p> <p>9 what he may have said to me. I'm not</p> <p>10 going to answer that question that</p> <p>11 way.</p> <p>12 BY MR. SWIDLER:</p> <p>13 <b>Q. You don't remember? It's not that</b></p> <p>14 <b>you are not going to answer? You don't</b></p> <p>15 <b>remember?</b></p> <p>16 A. Correct.</p> <p>17 MR. SWIDLER: So I understand,</p> <p>18 you're objecting to the production of</p> <p>19 GPS records?</p> <p>20 MS. TOMLJENOVIC: Yes, at this</p> <p>21 time, if you don't put something in</p> <p>22 writing specifically.</p> <p>23 MR. SWIDLER: We don't have</p> <p>24 time. I think discovery is in two</p> <p>25 days.</p> |

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| <p style="text-align: right;">81</p> <p>1 MS. TOMLJENOVIC: Off the<br/> 2 record.<br/> 3 (Off the record)<br/> 4 MR. SWIDLER: The deposition is<br/> 5 over unless -- do you have anything<br/> 6 you want to ask?<br/> 7 MS. TOMLJENOVIC: No.<br/> 8 MR. SWIDLER: You're done.<br/> 9 - - -<br/> 10 (Witness excused.)<br/> 11 - - -<br/> 12 (Deposition concluded. Time noted<br/> 13 2:53 p.m.)<br/> 14 - - -<br/> 15<br/> 16<br/> 17<br/> 18<br/> 19<br/> 20<br/> 21<br/> 22<br/> 23<br/> 24<br/> 25</p>   |  |
| <p style="text-align: right;">82</p> <p>1 - - -<br/> 2 C E R T I F I C A T I O N<br/> 3 - - -<br/> 4<br/> 5 I hereby certify that the proceedings and<br/> 6 evidence are contained fully and accurately in<br/> 7 the stenographic notes taken by me upon the<br/> 8 foregoing matter on February 19, 2013, and that<br/> 9 this is a correct transcript of same.<br/> 10<br/> 11<br/> 12<br/> 13 KIMBERLY A. LITTLE, RPR, CCR<br/> 14 NOTARY PUBLIC<br/> 15<br/> 16<br/> 17 (The foregoing certification of<br/> 18 this transcript does not apply to any<br/> 19 reproduction of the same by any means,<br/> 20 unless under the direct control and/or<br/> 21 supervision of the certifying<br/> 22 shorthand reporter.)<br/> 23<br/> 24<br/> 25</p> |  |

## ANTHONY COLASURDO

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